



Sen. Terry Link

Filed: 5/31/2004

09300HB0864sam001

LRB093 05709 MKM 52017 a

1 AMENDMENT TO HOUSE BILL 864

2 AMENDMENT NO. _____. Amend House Bill 864 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 1

5 Section 1-1. Short title. This Article may be cited as the
6 Tax Shelter Voluntary Compliance Act, and throughout this
7 Article, references to this Act shall mean this Article.

8 Section 1-5. Tax shelter voluntary compliance program.

9 (a) In general. The Department shall establish and
10 administer a tax shelter voluntary compliance program as
11 provided in this Section for eligible taxpayers subject to tax
12 under the Illinois Income Tax Act. The tax shelter voluntary
13 compliance program shall be conducted from October 15, 2004 to
14 November 30, 2004 and shall apply to tax liabilities under
15 Section 201 of the Illinois Income Tax Act attributable to the
16 use of abusive tax avoidance transactions for taxable years
17 beginning before January 1, 2004. The Department shall adopt
18 rules, issue forms and instructions, and take such other
19 actions as it deems necessary to implement the provisions of
20 this Act. Any correspondence mailed by the Department to a
21 taxpayer at the taxpayer's last known address outlining the tax
22 shelter voluntary compliance program constitutes a "contact"

1 within the meaning of Sections 1005(b)(6) and 1005(c) of the
2 Illinois Income Tax Act for taxable years to which this Act
3 applies.

4 (b) Election. An eligible taxpayer that meets the
5 requirements of subsection (c) of this Section with respect to
6 any taxable year to which this Act applies may elect to
7 participate in the tax shelter voluntary compliance program
8 under either (but not both) paragraph (1) or paragraph (2) of
9 this subsection. Such election shall be made separately for
10 each taxable year and in the form and manner prescribed by the
11 Department and, once made, shall be irrevocable.

12 (1) Voluntary compliance without appeal. If a taxpayer
13 elects to participate under this paragraph, then: (i) the
14 Department shall abate and not seek to collect any penalty
15 that may be applicable to the underreporting or
16 underpayment of Illinois income tax attributable to the use
17 of abusive tax avoidance transactions for such taxable
18 year; (ii) except as otherwise provided in this Act, the
19 Department shall not seek civil or criminal prosecution
20 against the taxpayer for such taxable year with respect to
21 abusive tax avoidance transactions; and (iii) the taxpayer
22 may not file a claim for credit or refund of amounts paid
23 for such taxable year in connection with abusive tax
24 avoidance transactions. No penalty may be waived or abated
25 under this Act if the penalty imposed relates to an amount
26 of Illinois income tax assessed prior to October 15, 2004.

27 (2) Voluntary compliance with appeal. If an eligible
28 taxpayer elects to participate under this paragraph, then:
29 (i) the Department shall abate and not seek to collect the
30 penalties imposed under Sections 1005(b) and 1005(c) of the
31 Illinois Income Tax Act with respect to such taxable year;
32 (ii) except as otherwise provided in this Act, the
33 Department shall not seek civil or criminal prosecution
34 against the taxpayer for such taxable year with respect to

1 abusive tax avoidance transactions; and (iii) the taxpayer
2 may file a claim for credit or refund as provided in the
3 Illinois Income Tax Act with respect to such taxable year.
4 Notwithstanding Section 909(e) of the Illinois Income Tax
5 Act, the taxpayer may not file a written protest until
6 after either of the following: (i) the Department issues a
7 notice of denial, or (ii) the earlier of (1) the date which
8 is 180 days after the date of a final determination by the
9 Internal Revenue Service with respect to the transactions
10 at issue, or (2) the date that is 4 years after the date
11 the claim for refund was filed or one year after full
12 payment of all tax, including penalty and interest. No
13 penalty may be waived or abated under this Act if the
14 penalty imposed relates to an amount of Illinois income tax
15 assessed prior to October 15, 2004.

16 (c) Eligible taxpayer. The tax shelter voluntary
17 compliance program applies to any taxpayer who, during the
18 period from October 15, 2004 to November 30, 2004, does both of
19 the following:

20 (1) Files an amended return for the taxable year for
21 which the taxpayer used an abusive tax avoidance
22 transaction to under report the taxpayer's Illinois income
23 tax liability, reporting the total Illinois net income and
24 tax for such taxable year computed without regard to any
25 abusive tax avoidance transactions; and

26 (2) Makes full payment of the entire amount of Illinois
27 income tax and interest due for such taxable year (not
28 including a payment made under protest as provided in
29 Section 2a.1 of the State Officers and Employees Money
30 Disposition Act (30 ILCS 230/2a.1)).

31 Section 1-10. Abusive tax avoidance transaction. For
32 purposes of this Act, the term "abusive tax avoidance
33 transaction" means a plan or arrangement devised for the

1 principal purpose of avoiding federal or Illinois income tax.
2 Abusive tax avoidance transactions include, but are not limited
3 to, "listed transactions", as defined in Treasury Regulations
4 Section 1.6011-4(b)(2), and Illinois listed transactions as
5 defined in Section 501(b)(2)(A)(2) of the Illinois Income Tax
6 Act.

7 Section 1-15. Article 2 Credits. In the event a taxpayer
8 does not participate in the tax shelter voluntary compliance
9 program with respect to a taxable year in which there exists a
10 deficiency attributable in whole or in part to an abusive tax
11 avoidance transaction, the following apply:

12 (1) the taxpayer's liability for such taxable year
13 under Section 201(a) and (b) of this Act, minus any credits
14 allowed under Article 2, shall in no event be less than the
15 increase in net income (or decrease in loss) attributable
16 to the abusive tax shelter times the applicable rate in
17 Section 201(b) of this Act;

18 (2) the taxpayer's liability for such taxable year
19 under Section 201(c) and (d) of this Act, minus any credits
20 allowed under Article 2, shall in no event be less than the
21 increase in net income (or decrease in loss) attributable
22 to the abusive tax shelter times the applicable rate in
23 Section 201(d) of this Act; and

24 (3) the determination of the amount of any Article 2
25 credit available to carry forward to years subsequent to
26 such taxable year shall be made without regard to
27 subsections (1) and (2).

28 Section 1-20. The fact of a taxpayer's participation in
29 the tax shelter voluntary compliance program shall not be
30 considered evidence that the taxpayer in fact engaged in an
31 abusive tax avoidance transaction.

1 ARTICLE 5

2 Section 5-1. Short title. This Article may be cited as the
3 Watercraft Use Tax Law, and references in this Article to "this
4 Law" mean this Article.

5 Section 5-5. Definitions. For the purposes of this Law:

6 "Department" means the Department of Revenue.

7 "Purchase price" means the reasonable consideration paid
8 for a watercraft valued at \$10,000 or more whether received in
9 money or otherwise, including, but not limited to, cash,
10 credits, property, and services, and including the value of any
11 motor sold with, or in conjunction with, the watercraft. Except
12 in the case of transfers between immediate family members,
13 reasonable consideration ordinarily means the fair market
14 value on the date the watercraft or the share of the watercraft
15 was acquired or the date the watercraft was brought into this
16 State, whichever is later, unless the taxpayer can demonstrate
17 that a different value is reasonable. In the case of transfers
18 between immediate family members, reasonable consideration
19 ordinarily means the consideration actually paid, unless it
20 appears from the facts and circumstances that the primary
21 motivation of the transfer was the avoidance of tax.

22 "Watercraft" means:

23 (1) Class 1, Class 2, Class 3, and Class 4 watercraft,
24 as defined in Section 3-2 of the Boat Registration and
25 Safety Act;

26 (2) personal watercraft, as defined in Section 1-2 of
27 the Boat Registration and Safety Act; and

28 (3) any boat equipped with an inboard motor.

29 Section 5-10. Tax imposed. A tax is hereby imposed on the
30 privilege of using, in this State, any watercraft acquired by
31 gift, transfer, or purchase after June 30, 2004. This tax does

1 not apply if: (i) the use of the watercraft is otherwise taxed
2 under the Use Tax Act; (ii) the watercraft is bought and used
3 by a governmental agency or a society, association, foundation,
4 or institution organized and operated exclusively for
5 charitable, religious, or educational purposes and that entity
6 has been issued an exemption identification number under
7 Section 1g of the Retailers' Occupation Tax Act; (iii) the use
8 of the watercraft is not subject to the Use Tax Act by reason
9 of subsection (a), (b), (c), (d), or (e) of Section 3-55 of
10 that Act dealing with the prevention of actual or likely
11 multi-state taxation; or (iv) the transfer is a gift to a
12 beneficiary in the administration of an estate and the
13 beneficiary is a surviving spouse.

14 Section 5-15. Rate of tax.

15 The rate of tax is 6.25% of the purchase price for each
16 purchase of watercraft that is subject to tax under this Law.
17 When an ownership share of a watercraft is acquired, the tax is
18 imposed on the purchase price of that share. All owners are
19 jointly and severally liable for any tax due as a result of the
20 purchase, gift, or transfer of an ownership share of the
21 watercraft.

22 Section 5-20. Returns.

23 (a) The purchaser, transferee, or donee shall file with the
24 Department a return signed by the purchaser, transferee, or
25 donee on a form prescribed by the Department. The return shall
26 contain a verification in substantially the following form and
27 such other information as the Department may reasonably
28 require:

29 VERIFICATION

30 I declare that I have examined this return and, to the best
31 of my knowledge, it is true, correct, and complete. I
32 understand that the penalty for willfully filing a false

1 return is a fine not to exceed \$1,000 or imprisonment in a
2 penal institution other than the penitentiary not to exceed
3 one year, or both a fine and imprisonment.

4 (b) The return and payment from the purchaser, transferee,
5 or donee shall be submitted to the Department within 30 days
6 after the date of purchase, donation, or other transfer or the
7 date the watercraft is brought into this State, whichever is
8 later. Payment of tax is a condition to securing certificate of
9 title for the watercraft from the Department of Natural
10 Resources. When a purchaser, transferee, or donee pays the tax
11 imposed by Section 5-10 of this Law, the Department (upon
12 request therefor from the purchaser, transferee, or donee)
13 shall issue an appropriate receipt to the purchaser,
14 transferee, or donee showing that he or she has paid the tax to
15 the Department. The receipt shall be sufficient to relieve the
16 purchaser, transferee, or donee from further liability for the
17 tax to which the receipt may refer.

18 Section 5-25. Filing false or incomplete return. Any person
19 required to file a return under this Law who willfully files a
20 false or incomplete return is guilty of a Class A misdemeanor.

21 Section 5-30. Determining purchase price. For the purpose
22 of assisting in determining the validity of the purchase price
23 reported on returns filed with the Department, the Department
24 may furnish the following information to persons with whom the
25 Department has contracted for service related to making that
26 determination: (i) the purchase price stated on the return;
27 (ii) the watercraft identification number; (iii) the year, the
28 make, and the model name or number of the watercraft; (iv) the
29 purchase date; and (v) the hours of operation.

30 Section 5-35. Powers of Department. The Department has full
31 power to: (i) administer and enforce this Law; (ii) collect all

1 taxes, penalties, and interest due under this Law; (iii)
2 dispose of taxes, penalties, and interest so collected in the
3 manner set forth in this Law; and (iv) determine all rights to
4 credit memoranda or refunds arising on account of the erroneous
5 payment of tax, penalty, or interest under this Law. In the
6 administration of, and compliance with, this Law, the
7 Department and persons who are subject to this Law have the
8 same rights, remedies, privileges, immunities, powers, and
9 duties, and are subject to the same conditions, restrictions,
10 limitations, penalties, and definitions of terms, and employ
11 the same modes of procedure, as are prescribed in the Use Tax
12 Act (except for the provisions of Section 3-70), that are not
13 inconsistent with this Law, as fully as if the provisions of
14 the Use Tax Act were set forth in this Law. In addition to any
15 other penalties imposed under law, any person convicted of
16 violating the provisions of this Law shall be assessed a fine
17 of \$1,000.

18 Section 5-40. Payments to Local Government Distributive
19 Fund and General Revenue Fund. The Department shall each month,
20 upon collecting any taxes as provided in this Law, pay 20% of
21 the money collected into the Local Government Distributive
22 Fund, a special fund in the State treasury, and 80% into the
23 General Revenue Fund.

24 Section 5-45. Rules. The Department has the authority to
25 adopt such rules as are reasonable and necessary to implement
26 the provisions of this Law.

27 Section 5-990. The Retailers' Occupation Tax Act is amended
28 by changing Section 1c as follows:

29 (35 ILCS 120/1c) (from Ch. 120, par. 440c)

30 Sec. 1c. A person who is engaged in the business of leasing

1 or renting motor vehicles or, beginning July 1, 2003, aircraft
2 or, beginning July 1, 2004, watercraft to others and who, in
3 connection with such business sells any used motor vehicle, ~~or~~
4 aircraft, or watercraft to a purchaser for his use and not for
5 the purpose of resale, is a retailer engaged in the business of
6 selling tangible personal property at retail under this Act to
7 the extent of the value of the vehicle or aircraft sold. For
8 the purpose of this Section "motor vehicle" has the meaning
9 prescribed in Section 1-157 of the Illinois Vehicle Code, as
10 now or hereafter amended. For the purpose of this Section
11 "aircraft" has the meaning prescribed in Section 3 of the
12 Illinois Aeronautics Act. For the purpose of this Section,
13 "watercraft" has the meaning prescribed in Section 5-5 of the
14 Watercraft Use Tax Law. (Nothing provided herein shall affect
15 liability incurred under this Act because of the sale at retail
16 of such motor vehicles, ~~or~~ aircraft, or watercraft to a
17 lessor.)

18 (Source: P.A. 93-24, eff. 6-20-03.)

19 Section 5-995. The Boat Registration and Safety Act is
20 amended by changing Section 3A-5 as follows:

21 (625 ILCS 45/3A-5) (from Ch. 95 1/2, par. 313A-5)

22 Sec. 3A-5. Certificate of title - Issuance - Records.

23 (a) The Department of Natural Resources shall file each
24 application received and, when satisfied as to its genuineness
25 and regularity, and that no tax imposed by the "Use Tax Act" or
26 the Watercraft Use Tax Law is owed as evidenced by the receipt
27 for payment or determination of exemption from the Department
28 of Revenue provided for in Section 3A-3 of this Article, and
29 that the applicant is entitled to the issuance of a certificate
30 of title, shall issue a certificate of title.

31 (b) The Department of Natural Resources shall maintain a
32 record of all certificates of title issued under a distinctive

1 title number assigned to the watercraft and, in the discretion
2 of the Department, in any other method determined.

3 (Source: P.A. 89-445, eff. 2-7-96.)

4 ARTICLE 10

5 Section 10-5. The Public Utilities Act is amended by
6 changing Section 8-403.1 as follows:

7 (220 ILCS 5/8-403.1) (from Ch. 111 2/3, par. 8-403.1)

8 Sec. 8-403.1. Electricity purchased from qualified solid
9 waste energy facility; tax credit; distributions for economic
10 development.

11 (a) It is hereby declared to be the policy of this State to
12 encourage the development of alternate energy production
13 facilities in order to conserve our energy resources and to
14 provide for their most efficient use.

15 (b) For the purpose of this Section and Section 9-215.1,
16 "qualified solid waste energy facility" or "QSWEF" means a
17 facility, regardless of when the facility was financed,
18 constructed, or completed, determined either before or after
19 this amendatory Act of the 93rd General Assembly becomes law by
20 the Illinois Commerce Commission to qualify as such under the
21 Local Solid Waste Disposal Act, to use methane gas generated
22 from landfills as its primary fuel, ~~and~~ to possess
23 characteristics that would enable it to qualify as a
24 cogeneration or small power production facility under federal
25 law, to meet the ownership requirements set forth in this
26 Section, to meet the primary fuel use requirements set forth in
27 this Section, to meet the requirements for the reimbursement of
28 State tax credits set forth in this Section, and to meet all
29 other requirements set forth in this Section. The Commission,
30 in order to promote the development of landfill sites for QSWEF
31 use, shall have the authority to determine the number of QSWEFs

1 approved at a single landfill site. In determining, for the
2 purposes of this Section, whether a facility meets the
3 requirements to become a small power production facility under
4 federal law, the Commission may consider, but is not bound by,
5 any action or inaction of a federal administrative agency or
6 any self-certification of a facility.

7 (c) In furtherance of the policy declared in this Section,
8 the Illinois Commerce Commission shall require electric
9 utilities to enter into long-term contracts, pursuant to a
10 tariff approved by the Commission, to purchase electricity from
11 qualified solid waste energy facilities located in the electric
12 utility's service area, for a period beginning on the date that
13 the facility begins generating electricity and having a
14 duration of not less than 10 years in the case of facilities
15 fueled by landfill-generated methane, or 20 years in the case
16 of facilities fueled by methane generated from a landfill owned
17 by a forest preserve district. The purchase rate contained in
18 such contracts for the period prior to 90 days after the
19 effective date of this amendatory Act of the 93rd General
20 Assembly shall be equal to the average amount per kilowatt-hour
21 paid from time to time by the unit or units of local government
22 in which the electricity generating facilities are located,
23 excluding amounts paid for street lighting and pumping service.

24 Notwithstanding any provision in any contract entered into
25 with a facility that has been approved as or found to be a
26 QSWEF, beginning 90 days after the effective date of this
27 amendatory Act of the 93rd General Assembly, the purchase rate
28 to be paid to the QSWEF by the utility shall be the rate that
29 the utility must purchase the output of qualified facilities
30 pursuant to the federal Public Utility Regulatory Policies Act
31 of 1978 and as determined pursuant to 83 Ill. Adm. Code 430.80,
32 plus an incentive payment (IP). The IP shall be calculated as
33 follows:

34 (1) for all QSWEFs using landfill generated methane as

1 their primary fuel, $IP = 0.5 \times (RR - AC)$, or

2 (2) for all QSWEFs using landfill generated methane as
3 their primary fuel from a landfill owned by a forest
4 preserve district, $IP = 0.75 \times (RR - AC)$.

5 For the purposes of this subsection, "RR" means the average
6 retail rate for electricity paid by the utility to the QSWEF
7 for all kWhs sold to the utility for the 3 years prior to the
8 effective date of this amendatory Act of the 93rd General
9 Assembly and "AC" means avoided costs or the average rate for
10 the utility that the utility must purchase the output of
11 qualified facilities pursuant to the federal Public Utility
12 Regulatory Policies Act of 1978 and as determined pursuant to
13 83 Ill. Adm. Code 430.80 for the 3 years prior to the effective
14 date of this amendatory Act of the 93rd General Assembly. If
15 there are less than 3 years of data available to calculate RR
16 and AC, then RR and AC shall be calculated over the time period
17 for which the RR data is available.

18 In the event that no data is available to calculate RR,
19 then $IP = 2.5$ cents per kilowatt-hour for all kilowatt-hours
20 sold for facilities using landfill generated methane, or $IP =$
21 3.75 cents per kilowatt-hour for all kilowatt-hours sold for
22 facilities fueled by methane generated from a landfill owned by
23 a forest preserve district.

24 The utility shall submit to the Illinois Commerce
25 Commission a monthly calculation of the kilowatt-hours
26 purchased by it from each QSWEF with which it has a contract.
27 These calculations shall be provided in total and according to
28 the amount of purchases made under each rate pursuant to this
29 Section. Contracts between a utility and a QSWEF pursuant to
30 this subsection are not transferable from the petitioning
31 owners to other entities without prior Commission approval.

32 The electric utility shall file a tariff with the Illinois
33 Commerce Commission that sets forth the calculations required
34 by this subsection.

1 The QSWEF owner or operator shall negotiate facility
2 operating conditions with the purchasing utility in accordance
3 with that utility's posted standard terms and conditions for
4 small power producers.

5 (d) With respect to electricity purchased by a public
6 utility pursuant to subsection (c), the public utility whenever
7 ~~a public utility is required to purchase electricity pursuant~~
8 ~~to subsection (c) above, it~~ shall be entitled to credits in
9 respect of its obligations to remit to the State taxes it has
10 collected under the Electricity Excise Tax Law equal to the
11 amounts, if any, by which payments for such electricity exceed
12 (i) the then current rate at which the utility must purchase
13 the output of qualified facilities pursuant to the federal
14 Public Utility Regulatory Policies Act of 1978, less (ii) any
15 costs, expenses, losses, damages or other amounts incurred by
16 the utility, or for which it becomes liable, arising out of its
17 failure to obtain such electricity from such other sources. The
18 credit provided in this subsection shall be applied against
19 taxes otherwise due or payable for the months in which payment
20 with respect to which the credit is claimed is made by the
21 utility. The amount of any such credit shall, in the first
22 instance, be determined by the utility, which shall make a
23 monthly report of such credits to the Illinois Commerce
24 Commission and, on its monthly tax return, to the Illinois
25 Department of Revenue. If the amount of the credit to which the
26 utility is entitled for any month exceeds the utility's
27 estimated obligation to remit to the State taxes it has
28 collected under the Electricity Excise Tax Law for that month,
29 the excess may be carried forward and applied to the utility's
30 estimated obligation in the immediately succeeding months.
31 ~~Under no circumstances shall a utility be required to purchase~~
32 ~~electricity from a qualified solid waste energy facility at the~~
33 ~~rate prescribed in subsection (c) of this Section if such~~
34 ~~purchase would result in estimated tax credits that exceed, on~~

1 ~~a monthly basis, the utility's estimated obligation to remit to~~
2 ~~the State taxes it has collected under the Electricity Excise~~
3 ~~Tax Law. The owner or operator shall negotiate facility~~
4 ~~operating conditions with the purchasing utility in accordance~~
5 ~~with that utility's posted standard terms and conditions for~~
6 ~~small power producers.~~ If the Department of Revenue disputes
7 the amount of any such credit, such dispute shall be decided by
8 the Illinois Commerce Commission.

9 Notwithstanding any other provision of this Section, the
10 tax credit provided in this subsection (d) is available for
11 purchases of all kWhs from any entity that has received from
12 the Illinois Commerce Commission a determination that it is a
13 QSWEF until such time as the ICC enters and serves on the
14 utility purchasing from such QSWEF an order specifically
15 finding that the entity in question is no longer entitled to
16 receive the incentive payment. Upon the issuance by the
17 Commission of such an order or an order revoking or suspending
18 an entity's status as a QSWEF, the Commission shall cause a
19 copy of the order to be served upon the electric utility
20 purchasing power from that QSWEF or entity. From and after 5
21 business days after the utility's receipt of that order and
22 until such time as the QSWEF's right to receive the incentive
23 payment or the entity's status as a QSWEF is reinstated by a
24 superseding order of the Commission, the utility shall not,
25 notwithstanding anything to the contrary in any contract
26 between the utility and the QSWEF, make the incentive payment
27 to the QSWEF or the entity.

28 Whenever a qualified solid waste energy facility that has
29 sold electricity at rates in effect prior to 90 days after the
30 effective date of this amendatory Act of the 93rd General
31 Assembly has paid or otherwise satisfied in full the capital
32 costs or indebtedness incurred in developing and implementing
33 the qualified facility or at the end of the contract entered
34 into pursuant to subsection (c), whichever occurs first, the

1 QSWEF ~~qualified facility~~ shall reimburse the Public Utility
2 Fund and the General Revenue Fund in the State treasury for the
3 actual reduction in payments to those Funds caused by this
4 subsection (d) for all amounts incurred prior to 90 days after
5 the effective date of this amendatory Act of the 93rd General
6 Assembly in a manner to be determined by the Illinois Commerce
7 Commission and based on the manner in which revenues for those
8 Funds were reduced. Notwithstanding the provisions of this
9 paragraph, whenever the Illinois Commerce Commission, pursuant
10 to a petition or an investigation on its own motion, enters an
11 order that revokes the QSWEF status of a previously approved
12 QSWEF, the Commission shall have the authority to require the
13 immediate reimbursement of the Public Utility Fund and the
14 General Revenue Fund in the State treasury for the actual
15 reduction in payments to those Funds caused by this subsection
16 (d) for all amounts incurred prior to 90 days after the
17 effective date of this amendatory Act of the 93rd General
18 Assembly in a manner to be determined by the Illinois Commerce
19 Commission. The payments required under this subsection shall
20 be made to the Illinois Commerce Commission, which shall
21 determine the appropriate disbursements to the Public Utility
22 Fund and the General Revenue Fund.

23 The Commission has the authority to require a QSWEF to
24 establish a plan to reimburse the State for tax credits
25 resulting from electricity sold prior to 90 days after the
26 effective date of this amendatory Act of the 93rd General
27 Assembly. The Commission also has the authority to require that
28 a QSWEF comply with any reimbursement plan it proposed and that
29 was approved by the Commission as part of any order granting
30 QSWEF status.

31 A QSWEF that lacks a Commission approved plan to reimburse
32 the State for tax credits resulting from electricity sold prior
33 to 90 days after the effective date of this amendatory Act of
34 the 93rd General Assembly, shall submit a proposed

1 reimbursement plan to the Commission for approval within 365
2 days after the effective date of this amendatory Act of the
3 93rd General Assembly. The Commission, in its discretion, may
4 approve such repayment plan if it finds that the repayment plan
5 is reasonably calculated to ensure that all reimbursement
6 obligations of the QSWEF will be satisfied when they become
7 due. If the Commission finds that the repayment plan as
8 proposed by the QSWEF does not meet this standard, it may order
9 its own repayment plan. A reimbursement plan approved by the
10 Commission may include, but is not limited to, creation of a
11 sinking fund, purchase of bonds or other financial instruments,
12 grant of a security interest, third party guarantee, or other
13 similar arrangement. Any account, fund, bond, financial
14 instrument, investment, or other similar investment or
15 set-aside used to fund a QSWEF reimbursement plan, if
16 denominated as such, shall be deemed to be held in trust for
17 the benefit of the Commission for the sole purpose of
18 reimbursing the QSWEF's reimbursement obligations to the State
19 and, absent the consent of the Commission, shall be used
20 exclusively to repay the QSWEF's tax credit reimbursement
21 obligations hereunder. If a QSWEF fails to file a reimbursement
22 plan as required by this subsection, then the Commission,
23 pursuant to an investigation on its own motion or petition,
24 shall order the suspension of the incentive payment provided
25 for in subsection (c). If the incentive payment is suspended
26 pursuant to this subsection, then it can only be reinstated by
27 an order of the Illinois Commerce Commission that finds that a
28 QSWEF is in compliance with the requirements of this
29 subsection.

30 The Commission shall have the authority to reconsider any
31 previously approved reimbursement plan to determine whether it
32 is adequate to meet the requirement that any reimbursement plan
33 be reasonably calculated to ensure that all reimbursement
34 obligations of the QSWEF will be satisfied when they become

1 due. If the Commission determines that the previously approved
2 reimbursement plan is inadequate for any reason, the Commission
3 may order the QSWEF to submit a new reimbursement plan, which
4 shall be approved if the Commission, in its discretion,
5 determines that the new reimbursement plan meets the criteria
6 for approval of an original reimbursement plan as set forth
7 herein. The Commission shall have the authority to modify a new
8 reimbursement plan filed by QSWEF to ensure that the approved
9 plan meets the criteria for approval of an original
10 reimbursement plan as set forth herein.

11 In the event the Commission enters an order determining
12 that a QSWEF has failed to comply with the terms of any
13 reimbursement plan that has been approved or ordered by the
14 Commission or in the event that an order is entered revoking
15 the QSWEF status of any entity, the Commission shall
16 automatically, by operation of law, obtain a lien on all assets
17 of the QSWEF, whether real or personal and whether currently
18 owned or after-acquired, to secure the payment of all
19 reimbursement obligations that the QSWEF has or will have
20 pursuant to this Section. The lien shall have the same force
21 and effect as a tax lien as provided for in Section 5a of the
22 Retailers' Occupation Tax Act. In addition to any other
23 remedies available under law for enforcement of a lien, the
24 lien granted herein in favor of the Commission shall be
25 enforceable, as far as practicable, in accordance with the
26 provisions applicable to enforcement of tax liens as set forth
27 in Sections 5b, 5c, 5d, 5e, 5f, and 5g of the Retailers'
28 Occupation Tax Act. In addition, the provisions of Section 5j
29 of the Retailers' Occupation Tax Act shall apply, as far as
30 practicable, to the repayment of any amounts required to be
31 reimbursed as provided for herein unless the Commission orders
32 otherwise.

33 Any entity that receives payments as provided for in
34 subsection (c) of this Section as if it were a QSWEF, but that

1 is determined not to qualify as a QSWEF, or any entity that is
2 authorized to operate as a QSWEF, but receives payments
3 pursuant to subsection (c) of this Section for the sale of
4 electricity that does not qualify under this Section is liable
5 to the State for all amounts so obtained plus attorneys' fees,
6 costs, and interest at the judgment rate accruing from the date
7 the improper payment was obtained. In addition, any director,
8 officer, partner, employee, or other person who has the
9 control, supervision, or responsibility for overseeing the
10 operations of such entity and who allows such entity to
11 illegally obtain payments pursuant to subsection (c) of this
12 Section shall be personally liable to the State for the amounts
13 received plus attorneys' fees, costs, and interest at the
14 judgment rate from the date the improper payment was obtained.
15 The remedies provided for herein are in addition to any other
16 remedies provided for by law.

17 (e) The Illinois Commerce Commission shall not require an
18 electric utility to purchase electricity from any qualified
19 solid waste energy facility which is directly or indirectly
20 owned or operated by an entity that is primarily engaged in the
21 business of producing or selling electricity, gas, or useful
22 thermal energy from a source other than one or more qualified
23 solid waste energy facilities. To effectuate this subsection
24 and the other requirements of this Act, the QSWEF must disclose
25 any entity with a direct or indirect ownership interest in it
26 as part of its initial petition under subsection (b) of this
27 Section, shall petition the Commission for a new determination
28 of QSWEF status if more than 25% of its direct or indirect
29 ownership changes, and shall not assign or transfer a QSWEF
30 determination without prior approval of the Commission.
31 Commission-approved owners and operators of QSWEFs must meet
32 the requirements of this subsection for the duration of the
33 contract entered into with a utility pursuant to subsection
34 (c). If a QSWEF fails to remain in compliance with this

1 subsection, then the Commission, pursuant to an investigation
2 on its own motion or a petition, shall terminate the payment
3 provided for in subsection (c) that is at a rate that exceeds
4 the then current rate at which the utility must purchase the
5 output of qualified facilities pursuant to the federal Public
6 Utility Regulatory Policies Act of 1978. The termination will
7 not excuse the repayment to the State treasury required by
8 subsection (d) for utility tax credits accumulated prior to 90
9 days after the effective date of this amendatory Act of the
10 93rd General Assembly and up to the time of the termination.

11 (e-5) If a QSWEF uses fuel other than landfill generated
12 methane to generate electricity without first receiving
13 Commission approval to use the other fuel, then the payment
14 from the utility to the QSWEF shall not exceed the then current
15 rate at which the utility must purchase the output of qualified
16 facilities pursuant to the federal Public Utility Regulatory
17 Policies Act of 1978. If the Commission finds, pursuant to an
18 investigation on its own motion or a petition, that a QSWEF
19 uses fuel other than landfill generated methane to generate
20 electricity without first receiving Commission approval, then
21 the Commission shall have the authority to revoke the QSWEF's
22 approval status and to require a QSWEF to repay all past
23 amounts received for electricity sold at a rate that exceeds
24 the then current rate at which the utility must purchase the
25 output of qualified facilities pursuant to the federal Public
26 Utility Regulatory Policies Act of 1978. The Commission shall
27 have the authority to require the QSWEF to repay all such
28 amounts from the date that the Commission determines that the
29 violation commenced. Commission action that revokes prior
30 QSWEF approval does not excuse the repayment to the State
31 treasury required by subsection (d) for utility tax credits
32 accumulated up to the time of the Commission action.

33 If a QSWEF or an entity seeking QSWEF approval petitions
34 the Commission to use fuel other than landfill generated

1 methane to generate electricity, then the Commission shall have
2 the authority to:

3 (1) establish the methodology for determining the
4 amount of electricity that is generated by the use of
5 landfill generated methane and the amount that is generated
6 by the use of other fuel;

7 (2) determine all reporting requirements for the QSWEF
8 that are necessary for the Commission to determine the
9 amount of electricity that is generated by the use of
10 landfill generated methane and the amount that is generated
11 by the use of other fuel and the resulting payments to the
12 QSWEF; and

13 (3) require that the QSWEF, at the QSWEF's expense,
14 install metering equipment that the Commission determines
15 is necessary to enforce compliance with this subsection.

16 If the Commission approves a petition to use fuel other
17 than landfill generated methane for the generation of
18 electricity, the Commission shall establish procedures for
19 calculating the subsection (c) incentive payment that is
20 applicable only to kilowatt-hours generated by the use of
21 landfill generated methane and for submitting these
22 calculations to the utility that purchases power from the
23 QSWEF. The utility shall have the authority to adjust the next
24 month's purchases from a QSWEF to reflect the entire amount of
25 the Commission's calculations. If such an adjustment requires
26 payment from the QSWEF to the utility, then the QSWEF must
27 remit payment in full to the utility within 30 days of
28 receiving the bill from the utility. The utility shall adjust
29 its monthly State tax credits, taken pursuant to subsection
30 (d), accordingly to reflect the Commission's calculations
31 under this subsection, such that the subsection (d) tax credits
32 are taken only for kWhs generated by landfill generated
33 methane.

34 If the Commission approves a petition by a QSWEF or an

1 entity seeking QSWEF approval to use fuel other than landfill
2 generated methane to generate electricity, then the Commission
3 shall restrict the use of such fuel to the minimum amounts of
4 fuel required for ignition, startup, testing, flame
5 stabilization, and control uses, the minimum amounts of fuel
6 required to alleviate or prevent unanticipated equipment
7 outages, and emergencies directly affecting the public health,
8 safety, or welfare that would result from electric power
9 outages. Such fuel use may not, in the aggregate, exceed 25% of
10 the total fuel input, including landfill generated methane,
11 during the 12-month period beginning with the date the QSWEF
12 first produces electric energy and any calendar year subsequent
13 to the year in which the QSWEF first produces electricity.

14 If a QSWEF fails to comply with a Commission order pursuant
15 to this subsection, then the Commission shall, pursuant to an
16 investigation on its own motion or petition, suspend the
17 payment provided for in subsection (c) that exceeds the then
18 current rate at which the utility must purchase the output of
19 qualified facilities pursuant to the federal Public Utility
20 Regulatory Policies Act of 1978. If the payment provided for in
21 subsection (c) is suspended pursuant to this subsection, then
22 it can only be reinstated by an order of the Illinois Commerce
23 Commission that finds that a QSWEF is in compliance with the
24 requirements of this subsection.

25 (f) This Section does not require an electric utility to
26 construct additional facilities unless those facilities are
27 paid for by the owner or operator of the affected qualified
28 solid waste energy facility.

29 (g) The Illinois Commerce Commission shall require that:
30 (1) electric utilities use the electricity purchased from a
31 qualified solid waste energy facility to displace electricity
32 generated from nuclear power or coal mined and purchased
33 outside the boundaries of the State of Illinois before
34 displacing electricity generated from coal mined and purchased

1 within the State of Illinois, to the extent possible, and (2)
2 electric utilities report annually to the Commission on the
3 extent of such displacements.

4 (h) Nothing in this Section is intended to cause an
5 electric utility that is required to purchase power hereunder
6 to incur any economic loss as a result of its purchase. All
7 amounts paid for power which a utility is required to purchase
8 pursuant to subparagraph (c) shall be deemed to be costs
9 prudently incurred for purposes of computing charges under
10 rates authorized by Section 9-220 of this Act. Tax credits
11 provided for herein shall be reflected in charges made pursuant
12 to rates so authorized to the extent such credits are based
13 upon a cost which is also reflected in such charges.

14 (i) Beginning in February 1999 and through January 2009,
15 each qualified solid waste energy facility that sells
16 electricity to an electric utility at the purchase rate
17 described in subsection (c) shall file with the Department of
18 Revenue on or before the 15th of each month a form, prescribed
19 by the Department of Revenue, that states the number of
20 kilowatt hours of electricity for which payment was received at
21 that purchase rate from electric utilities in Illinois during
22 the immediately preceding month. This form shall be accompanied
23 by a payment from the qualified solid waste energy facility in
24 an amount equal to six-tenths of a mill (\$.0006) per kilowatt
25 hour of electricity stated on the form. Beginning on the
26 effective date of this amendatory Act of the 92nd General
27 Assembly, a qualified solid waste energy facility must file the
28 form required under this subsection (i) before the 15th of each
29 month regardless of whether the facility received any payment
30 in the previous month. Payments received by the Department of
31 Revenue shall be deposited into the Municipal Economic
32 Development Fund, a trust fund created outside the State
33 treasury. The State Treasurer may invest the moneys in the Fund
34 in any investment authorized by the Public Funds Investment

1 Act, and investment income shall be deposited into and become
2 part of the Fund. Moneys in the Fund shall be used by the State
3 Treasurer as provided in subsection (j). The obligation of a
4 qualified solid waste energy facility to make payments into the
5 Municipal Economic Development Fund shall terminate upon
6 either: (1) expiration or termination of a facility's contract
7 to sell electricity to an electric utility at the purchase rate
8 described in subsection (c); or (2) entry of an enforceable,
9 final, and non-appealable order by a court of competent
10 jurisdiction that Public Act 89-448 is invalid. Payments by a
11 qualified solid waste energy facility into the Municipal
12 Economic Development Fund do not relieve the qualified solid
13 waste energy facility of its obligation to reimburse the Public
14 Utility Fund and the General Revenue Fund for the actual
15 reduction in payments to those Funds as a result of credits
16 received by electric utilities under subsection (d).

17 A qualified solid waste energy facility that fails to
18 timely file the requisite form and payment as required by this
19 subsection (i) shall be subject to penalties and interest in
20 conformance with the provisions of the Illinois Uniform Penalty
21 and Interest Act.

22 Every qualified solid waste energy facility subject to the
23 provisions of this subsection (i) shall keep and maintain
24 records and books of its sales pursuant to subsection (c),
25 including payments received from those sales and the
26 corresponding tax payments made in accordance with this
27 subsection (i), and for purposes of enforcement of this
28 subsection (i) all such books and records shall be subject to
29 inspection by the Department of Revenue or its duly authorized
30 agents or employees.

31 When a qualified solid waste energy facility fails to file
32 the form or make the payment required under this subsection
33 (i), the Department of Revenue, to the extent that it is
34 practical, may enforce the payment obligation in a manner

1 consistent with Section 5 of the Retailers' Occupation Tax Act,
2 and if necessary may impose and enforce a tax lien in a manner
3 consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, and 5i of
4 the Retailers' Occupation Tax Act. No tax lien may be imposed
5 or enforced, however, unless a qualified solid waste energy
6 facility fails to make the payment required under this
7 subsection (i). Only to the extent necessary and for the
8 purpose of enforcing this subsection (i), the Department of
9 Revenue may secure necessary information from a qualified solid
10 waste energy facility in a manner consistent with Section 10 of
11 the Retailers' Occupation Tax Act.

12 All information received by the Department of Revenue in
13 its administration and enforcement of this subsection (i) shall
14 be confidential in a manner consistent with Section 11 of the
15 Retailers' Occupation Tax Act. The Department of Revenue may
16 adopt rules to implement the provisions of this subsection (i).

17 For purposes of implementing the maximum aggregate
18 distribution provisions in subsections (j) and (k), when a
19 qualified solid waste energy facility makes a late payment to
20 the Department of Revenue for deposit into the Municipal
21 Economic Development Fund, that payment and deposit shall be
22 attributed to the month and corresponding quarter in which the
23 payment should have been made, and the Treasurer shall make
24 retroactive distributions or refunds, as the case may be,
25 whenever such late payments so require.

26 (j) The State Treasurer, without appropriation, must make
27 distributions immediately after January 15, April 15, July 15,
28 and October 15 of each year, up to maximum aggregate
29 distributions of \$500,000 for the distributions made in the 4
30 quarters beginning with the April distribution and ending with
31 the January distribution, from the Municipal Economic
32 Development Fund to each city, village, or incorporated town
33 that has within its boundaries an incinerator that: (1) uses
34 or, on the effective date of Public Act 90-813, used municipal

1 waste as its primary fuel to generate electricity; (2) was
2 determined by the Illinois Commerce Commission to qualify as a
3 qualified solid waste energy facility prior to the effective
4 date of Public Act 89-448; and (3) commenced operation prior to
5 January 1, 1998. Total distributions in the aggregate to all
6 qualified cities, villages, and incorporated towns in the 4
7 quarters beginning with the April distribution and ending with
8 the January distribution shall not exceed \$500,000. The amount
9 of each distribution shall be determined pro rata based on the
10 population of the city, village, or incorporated town compared
11 to the total population of all cities, villages, and
12 incorporated towns eligible to receive a distribution.
13 Distributions received by a city, village, or incorporated town
14 must be held in a separate account and may be used only to
15 promote and enhance industrial, commercial, residential,
16 service, transportation, and recreational activities and
17 facilities within its boundaries, thereby enhancing the
18 employment opportunities, public health and general welfare,
19 and economic development within the community, including
20 administrative expenditures exclusively to further these
21 activities. These funds, however, shall not be used by the
22 city, village, or incorporated town, directly or indirectly, to
23 purchase, lease, operate, or in any way subsidize the operation
24 of any incinerator, and these funds shall not be paid, directly
25 or indirectly, by the city, village, or incorporated town to
26 the owner, operator, lessee, shareholder, or bondholder of any
27 incinerator. Moreover, these funds shall not be used to pay
28 attorneys fees in any litigation relating to the validity of
29 Public Act 89-448. Nothing in this Section prevents a city,
30 village, or incorporated town from using other corporate funds
31 for any legitimate purpose. For purposes of this subsection,
32 the term "municipal waste" has the meaning ascribed to it in
33 Section 3.290 of the Environmental Protection Act.

34 (k) If maximum aggregate distributions of \$500,000 under

1 subsection (j) have been made after the January distribution
2 from the Municipal Economic Development Fund, then the balance
3 in the Fund shall be refunded to the qualified solid waste
4 energy facilities that made payments that were deposited into
5 the Fund during the previous 12-month period. The refunds shall
6 be prorated based upon the facility's payments in relation to
7 total payments for that 12-month period.

8 (l) Beginning January 1, 2000, and each January 1
9 thereafter, each city, village, or incorporated town that
10 received distributions from the Municipal Economic Development
11 Fund, continued to hold any of those distributions, or made
12 expenditures from those distributions during the immediately
13 preceding year shall submit to a financial and compliance and
14 program audit of those distributions performed by the Auditor
15 General at no cost to the city, village, or incorporated town
16 that received the distributions. The audit should be completed
17 by June 30 or as soon thereafter as possible. The audit shall
18 be submitted to the State Treasurer and those officers
19 enumerated in Section 3-14 of the Illinois State Auditing Act.
20 If the Auditor General finds that distributions have been
21 expended in violation of this Section, the Auditor General
22 shall refer the matter to the Attorney General. The Attorney
23 General may recover, in a civil action, 3 times the amount of
24 any distributions illegally expended. For purposes of this
25 subsection, the terms "financial audit," "compliance audit",
26 and "program audit" have the meanings ascribed to them in
27 Sections 1-13 and 1-15 of the Illinois State Auditing Act.

28 (m) All QSWEFs are subject to the authority of the Illinois
29 Commerce Commission as provided in Article V of the Public
30 Utilities Act.

31 (n) The Commission shall have the authority, after notice
32 and hearing held on complaint or the Commission's own motion:

33 (1) to suspend or revoke the right to subsection (c)
34 payments that exceeds the then current rate at which the

1 utility must purchase the output of qualified facilities
2 pursuant to the federal Public Utility Regulatory Policies
3 Act of 1978 for a violation of this Section or of any
4 Commission order, decision, or rule concerning QSWEFs;

5 (2) to suspend or revoke an entity's status as a QSWEF;

6 or

7 (3) to impose penalties under Section 5-202.

8 (o) Failure of a QSWEF to make subsection (d) reimbursement
9 payments to the State does not relieve the QSWEF of its
10 obligation to make such payments.

11 In the event that a QSWEF ceases to operate prior to the
12 end of its subsection (c) contract with an electric utility,
13 the QSWEF is nevertheless obligated to reimburse the State as
14 set forth in subsection (d) for all tax credits granted to the
15 utility for generation purchased from the QSWEF. In the event
16 of such a default, the full amount of the reimbursement
17 obligation will become due and owing.

18 In the event that a QSWEF fails to make reimbursement
19 payments at any time after the term of its subsection (c)
20 contract concludes, the State may take action to collect the
21 full amounts owed under this Section. In the event of such a
22 default, the full amount of the reimbursement obligation will
23 become due and owing.

24 (p) For the purposes of enforcement of this Section, the
25 Commission or its duly authorized agents or employees shall
26 have full and complete access to all books, records, studies,
27 and reports of a QSWEF related to this Section. If a QSWEF
28 fails to allow the Commission or its duly authorized agents or
29 employees full and complete access to all books, records,
30 studies, and reports of the QSWEF, then, pursuant to an
31 investigation based upon its own motion or a petition, the
32 Commission shall suspend the incentive payment provided for in
33 subsection (c). If the incentive payment provided for in
34 subsection (c) is suspended pursuant to this subsection, then

1 it can only be reinstated by an order of the Illinois Commerce
2 Commission that finds that a QSWEF is in compliance with the
3 requirements of this subsection.

4 (g) Each QSWEF shall file, no later than the first business
5 day of February of each calendar year, a sworn affidavit with
6 the Commission's Chief Clerk that expressly affirms or denies
7 their compliance with this Section, all applicable Commission
8 rules governing QSWEF status and Qualifying Facility status
9 under federal law, and all orders of the Commission governing
10 QSWEF status.

11 If a QSWEF fails to meet this filing requirement within 15
12 days of the required filing date, then the Commission, pursuant
13 to an investigation on its own motion or petition, shall order
14 the suspension of the incentive payment provided for subsection
15 (c). The requirements of the sworn affidavit may be set forth
16 in an electric utility's tariff approved by the Commission or
17 in the Commission's rules. If the incentive payment provided
18 for in subsection (c) is suspended pursuant to this subsection,
19 then it can only be reinstated by an Order of the Illinois
20 Commerce Commission that finds that a QSWEF is in compliance
21 with the requirements of this subsection.

22 If the Commission, based upon an investigation of its own
23 motion or by petition, finds that the sworn affidavit filed
24 pursuant to this subsection is not supported by fact, then the
25 Commission shall order the suspension of the incentive payment
26 provided for in subsection (c). If the incentive payment
27 provided for in subsection (c) is suspended pursuant to this
28 subsection, then it can only be reinstated by an Order of the
29 Illinois Commerce Commission that finds that a QSWEF is in
30 compliance with the requirements of this subsection.

31 A QSWEF shall pay to the Commission all the costs and
32 expenses, including attorney's fees, incurred by the
33 Commission in any action or proceeding to which the Commission
34 may be made a party by reason of the QSWEF having an obligation

1 to repay to the State tax credits or payments provided for in
2 subsection (c), and the QSWEF shall pay to the Commission all
3 the costs and expenses, including attorney's fees, incurred by
4 the Commission in enforcing any of the terms and provisions of
5 this Section and incurred in any action brought by the
6 Commission against a QSWEF on account of the provisions of this
7 Section. All such costs, expenses, and attorney's fees may be
8 included in and form a part of any judgment entered in any
9 proceeding brought by the Commission against a QSWEF under this
10 Section. Any such costs, expenses, and legal fees recovered
11 from a QSWEF shall be deposited in the Public Utility Fund or
12 in the General Revenue Fund, or both, based upon the ratable
13 share of such costs, expenses, and legal fees borne by each
14 fund.

15 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01;
16 92-574, eff. 6-26-02.)

17 ARTICLE 12

18 Section 12-5. The Use Tax Act is amended by changing
19 Section 3-85 as follows:

20 (35 ILCS 105/3-85)

21 Sec. 3-85. Manufacturer's Purchase Credit. For purchases
22 of machinery and equipment made on and after January 1, 1995
23 ~~and~~ through June 30, 2003, and on and after July 1, 2004, a
24 purchaser of manufacturing machinery and equipment that
25 qualifies for the exemption provided by paragraph (18) of
26 Section 3-5 of this Act earns a credit in an amount equal to a
27 fixed percentage of the tax which would have been incurred
28 under this Act on those purchases. For purchases of graphic
29 arts machinery and equipment made on or after July 1, 1996 and
30 through June 30, 2003, and on and after July 1, 2004, a
31 purchaser of graphic arts machinery and equipment that

1 qualifies for the exemption provided by paragraph (6) of
2 Section 3-5 of this Act earns a credit in an amount equal to a
3 fixed percentage of the tax that would have been incurred under
4 this Act on those purchases. The credit earned for purchases of
5 manufacturing machinery and equipment or graphic arts
6 machinery and equipment shall be referred to as the
7 Manufacturer's Purchase Credit. A graphic arts producer is a
8 person engaged in graphic arts production as defined in Section
9 2-30 of the Retailers' Occupation Tax Act. Beginning July 1,
10 1996, all references in this Section to manufacturers or
11 manufacturing shall also be deemed to refer to graphic arts
12 producers or graphic arts production.

13 The amount of credit shall be a percentage of the tax that
14 would have been incurred on the purchase of manufacturing
15 machinery and equipment or graphic arts machinery and equipment
16 if the exemptions provided by paragraph (6) or paragraph (18)
17 of Section 3-5 of this Act had not been applicable. The
18 percentage shall be as follows:

19 (1) 15% for purchases made on or before June 30, 1995.

20 (2) 25% for purchases made after June 30, 1995, and on
21 or before June 30, 1996.

22 (3) 40% for purchases made after June 30, 1996, and on
23 or before June 30, 1997.

24 (4) 50% for purchases made on or after July 1, 1997.

25 (a) Manufacturer's Purchase Credit earned prior to July 1,
26 2003. This subsection (a) applies to Manufacturer's Purchase
27 Credit earned prior to July 1, 2003. A purchaser of production
28 related tangible personal property desiring to use the
29 Manufacturer's Purchase Credit shall certify to the seller
30 prior to October 1, 2003 that the purchaser is satisfying all
31 or part of the liability under the Use Tax Act or the Service
32 Use Tax Act that is due on the purchase of the production
33 related tangible personal property by use of Manufacturer's
34 Purchase Credit. The Manufacturer's Purchase Credit

1 certification must be dated and shall include the name and
2 address of the purchaser, the purchaser's registration number,
3 if registered, the credit being applied, and a statement that
4 the State Use Tax or Service Use Tax liability is being
5 satisfied with the manufacturer's or graphic arts producer's
6 accumulated purchase credit. Certification may be incorporated
7 into the manufacturer's or graphic arts producer's purchase
8 order. Manufacturer's Purchase Credit certification provided
9 by the manufacturer or graphic arts producer prior to October
10 1, 2003 may be used to satisfy the retailer's or serviceman's
11 liability under the Retailers' Occupation Tax Act or Service
12 Occupation Tax Act for the credit claimed, not to exceed 6.25%
13 of the receipts subject to tax from a qualifying purchase, but
14 only if the retailer or serviceman reports the Manufacturer's
15 Purchase Credit claimed as required by the Department. A
16 Manufacturer's Purchase Credit reported on any original or
17 amended return filed under this Act after October 20, 2003
18 shall be disallowed. The Manufacturer's Purchase Credit earned
19 by purchase of exempt manufacturing machinery and equipment or
20 graphic arts machinery and equipment is a non-transferable
21 credit. A manufacturer or graphic arts producer that enters
22 into a contract involving the installation of tangible personal
23 property into real estate within a manufacturing or graphic
24 arts production facility may, prior to October 1, 2003,
25 authorize a construction contractor to utilize credit
26 accumulated by the manufacturer or graphic arts producer to
27 purchase the tangible personal property. A manufacturer or
28 graphic arts producer intending to use accumulated credit to
29 purchase such tangible personal property shall execute a
30 written contract authorizing the contractor to utilize a
31 specified dollar amount of credit. The contractor shall
32 furnish, prior to October 1, 2003, the supplier with the
33 manufacturer's or graphic arts producer's name, registration
34 or resale number, and a statement that a specific amount of the

1 Use Tax or Service Use Tax liability, not to exceed 6.25% of
2 the selling price, is being satisfied with the credit. The
3 manufacturer or graphic arts producer shall remain liable to
4 timely report all information required by the annual Report of
5 Manufacturer's Purchase Credit Used for all credit utilized by
6 a construction contractor.

7 No Manufacturer's Purchase Credits earned prior to July 1,
8 2003 may be used after October 1, 2003. The Manufacturer's
9 Purchase Credit may be used to satisfy liability under the Use
10 Tax Act or the Service Use Tax Act due on the purchase of
11 production related tangible personal property (including
12 purchases by a manufacturer, by a graphic arts producer, or by
13 a lessor who rents or leases the use of the property to a
14 manufacturer or graphic arts producer) that does not otherwise
15 qualify for the manufacturing machinery and equipment
16 exemption or the graphic arts machinery and equipment
17 exemption. "Production related tangible personal property"
18 means (i) all tangible personal property used or consumed by
19 the purchaser in a manufacturing facility in which a
20 manufacturing process described in Section 2-45 of the
21 Retailers' Occupation Tax Act takes place, including tangible
22 personal property purchased for incorporation into real estate
23 within a manufacturing facility and including, but not limited
24 to, tangible personal property used or consumed in activities
25 such as preproduction material handling, receiving, quality
26 control, inventory control, storage, staging, and packaging
27 for shipping and transportation purposes; (ii) all tangible
28 personal property used or consumed by the purchaser in a
29 graphic arts facility in which graphic arts production as
30 described in Section 2-30 of the Retailers' Occupation Tax Act
31 takes place, including tangible personal property purchased
32 for incorporation into real estate within a graphic arts
33 facility and including, but not limited to, all tangible
34 personal property used or consumed in activities such as

1 graphic arts preliminary or pre-press production,
2 pre-production material handling, receiving, quality control,
3 inventory control, storage, staging, sorting, labeling,
4 mailing, tying, wrapping, and packaging; and (iii) all tangible
5 personal property used or consumed by the purchaser for
6 research and development. "Production related tangible
7 personal property" does not include (i) tangible personal
8 property used, within or without a manufacturing facility, in
9 sales, purchasing, accounting, fiscal management, marketing,
10 personnel recruitment or selection, or landscaping or (ii)
11 tangible personal property required to be titled or registered
12 with a department, agency, or unit of federal, state, or local
13 government. The Manufacturer's Purchase Credit may be used,
14 prior to October 1, 2003, to satisfy the tax arising either
15 from the purchase of machinery and equipment on or after
16 January 1, 1995 for which the exemption provided by paragraph
17 (18) of Section 3-5 of this Act was erroneously claimed, or the
18 purchase of machinery and equipment on or after July 1, 1996
19 for which the exemption provided by paragraph (6) of Section
20 3-5 of this Act was erroneously claimed, but not in
21 satisfaction of penalty, if any, and interest for failure to
22 pay the tax when due. A purchaser of production related
23 tangible personal property who is required to pay Illinois Use
24 Tax or Service Use Tax on the purchase directly to the
25 Department may, prior to October 1, 2003, utilize the
26 Manufacturer's Purchase Credit in satisfaction of the tax
27 arising from that purchase, but not in satisfaction of penalty
28 and interest. A purchaser who uses the Manufacturer's Purchase
29 Credit to purchase property which is later determined not to be
30 production related tangible personal property may be liable for
31 tax, penalty, and interest on the purchase of that property as
32 of the date of purchase but shall be entitled to use the
33 disallowed Manufacturer's Purchase Credit, so long as it has
34 not expired and is used prior to October 1, 2003, on qualifying

1 purchases of production related tangible personal property not
2 previously subject to credit usage. The Manufacturer's
3 Purchase Credit earned by a manufacturer or graphic arts
4 producer expires the last day of the second calendar year
5 following the calendar year in which the credit arose. No
6 Manufacturer's Purchase Credit may be used after September 30,
7 2003 regardless of when that credit was earned.

8 A purchaser earning Manufacturer's Purchase Credit shall
9 sign and file an annual Report of Manufacturer's Purchase
10 Credit Earned for each calendar year no later than the last day
11 of the sixth month following the calendar year in which a
12 Manufacturer's Purchase Credit is earned. A Report of
13 Manufacturer's Purchase Credit Earned shall be filed on forms
14 as prescribed or approved by the Department and shall state,
15 for each month of the calendar year: (i) the total purchase
16 price of all purchases of exempt manufacturing or graphic arts
17 machinery on which the credit was earned; (ii) the total State
18 Use Tax or Service Use Tax which would have been due on those
19 items; (iii) the percentage used to calculate the amount of
20 credit earned; (iv) the amount of credit earned; and (v) such
21 other information as the Department may reasonably require. A
22 purchaser earning Manufacturer's Purchase Credit shall
23 maintain records which identify, as to each purchase of
24 manufacturing or graphic arts machinery and equipment on which
25 the purchaser earned Manufacturer's Purchase Credit, the
26 vendor (including, if applicable, either the vendor's
27 registration number or Federal Employer Identification
28 Number), the purchase price, and the amount of Manufacturer's
29 Purchase Credit earned on each purchase.

30 A purchaser using Manufacturer's Purchase Credit shall
31 sign and file an annual Report of Manufacturer's Purchase
32 Credit Used for each calendar year no later than the last day
33 of the sixth month following the calendar year in which a
34 Manufacturer's Purchase Credit is used. A Report of

1 Manufacturer's Purchase Credit Used shall be filed on forms as
2 prescribed or approved by the Department and shall state, for
3 each month of the calendar year: (i) the total purchase price
4 of production related tangible personal property purchased
5 from Illinois suppliers; (ii) the total purchase price of
6 production related tangible personal property purchased from
7 out-of-state suppliers; (iii) the total amount of credit used
8 during such month; and (iv) such other information as the
9 Department may reasonably require. A purchaser using
10 Manufacturer's Purchase Credit shall maintain records that
11 identify, as to each purchase of production related tangible
12 personal property on which the purchaser used Manufacturer's
13 Purchase Credit, the vendor (including, if applicable, either
14 the vendor's registration number or Federal Employer
15 Identification Number), the purchase price, and the amount of
16 Manufacturer's Purchase Credit used on each purchase.

17 No annual report shall be filed before May 1, 1996 or after
18 June 30, 2004. A purchaser that fails to file an annual Report
19 of Manufacturer's Purchase Credit Earned or an annual Report of
20 Manufacturer's Purchase Credit Used by the last day of the
21 sixth month following the end of the calendar year shall
22 forfeit all Manufacturer's Purchase Credit for that calendar
23 year unless it establishes that its failure to file was due to
24 reasonable cause. Manufacturer's Purchase Credit reports may
25 be amended to report and claim credit on qualifying purchases
26 not previously reported at any time before the credit would
27 have expired, unless both the Department and the purchaser have
28 agreed to an extension of the statute of limitations for the
29 issuance of a notice of tax liability as provided in Section 4
30 of the Retailers' Occupation Tax Act. If the time for
31 assessment or refund has been extended, then amended reports
32 for a calendar year may be filed at any time prior to the date
33 to which the statute of limitations for the calendar year or
34 portion thereof has been extended. No Manufacturer's Purchase

1 Credit report filed with the Department for periods prior to
2 January 1, 1995 shall be approved. Manufacturer's Purchase
3 Credit claimed on an amended report may be used, until October
4 1, 2003, to satisfy tax liability under the Use Tax Act or the
5 Service Use Tax Act (i) on qualifying purchases of production
6 related tangible personal property made after the date the
7 amended report is filed or (ii) assessed by the Department on
8 qualifying purchases of production related tangible personal
9 property made in the case of manufacturers on or after January
10 1, 1995, or in the case of graphic arts producers on or after
11 July 1, 1996.

12 If the purchaser is not the manufacturer or a graphic arts
13 producer, but rents or leases the use of the property to a
14 manufacturer or graphic arts producer, the purchaser may earn,
15 report, and use Manufacturer's Purchase Credit in the same
16 manner as a manufacturer or graphic arts producer.

17 A purchaser shall not be entitled to any Manufacturer's
18 Purchase Credit for a purchase that is required to be reported
19 and is not timely reported as provided in this Section. A
20 purchaser remains liable for (i) any tax that was satisfied by
21 use of a Manufacturer's Purchase Credit, as of the date of
22 purchase, if that use is not timely reported as required in
23 this Section and (ii) for any applicable penalties and interest
24 for failing to pay the tax when due. No Manufacturer's Purchase
25 Credit may be used after September 30, 2003 to satisfy any tax
26 liability imposed under this Act, including any audit
27 liability.

28 (b) Manufacturer's Purchase Credit earned on and after July
29 1, 2004. This subsection (b) applies to Manufacturer's Purchase
30 Credit earned on and after July 1, 2004.

31 A purchaser of production related tangible personal
32 property desiring to use the Manufacturer's Purchase Credit
33 shall certify to the seller that the purchaser is satisfying
34 all or part of the liability under the Use Tax Act or the

1 Service Use Tax Act that is due on the purchase of the
2 production related tangible personal property by use of
3 Manufacturer's Purchase Credit. The Manufacturer's Purchase
4 Credit certification must be dated and shall include the name
5 and address of the purchaser, the purchaser's registration
6 number, if registered, the credit being applied, and a
7 statement that the State Use Tax or Service Use Tax liability
8 is being satisfied with the manufacturer's or graphic arts
9 producer's accumulated purchase credit. Certification may be
10 incorporated into the manufacturer's or graphic arts
11 producer's purchase order. Manufacturer's Purchase Credit
12 certification provided by the manufacturer or graphic arts
13 producer may be used to satisfy the retailer's or serviceman's
14 liability under the Retailers' Occupation Tax Act or Service
15 Occupation Tax Act for the credit claimed, not to exceed 6.25%
16 of the receipts subject to tax from a qualifying purchase, but
17 only if the retailer or serviceman reports the Manufacturer's
18 Purchase Credit claimed as required by the Department. The
19 Manufacturer's Purchase Credit earned by purchase of exempt
20 manufacturing machinery and equipment or graphic arts
21 machinery and equipment is a non-transferable credit. A
22 manufacturer or graphic arts producer that enters into a
23 contract involving the installation of tangible personal
24 property into real estate within a manufacturing or graphic
25 arts production facility may, on or after July 1, 2004,
26 authorize a construction contractor to utilize credit
27 accumulated by the manufacturer or graphic arts producer to
28 purchase the tangible personal property. A manufacturer or
29 graphic arts producer intending to use accumulated credit to
30 purchase such tangible personal property shall execute a
31 written contract authorizing the contractor to utilize a
32 specified dollar amount of credit. The contractor shall furnish
33 the supplier with the manufacturer's or graphic arts producer's
34 name, registration or resale number, and a statement that a

1 specific amount of the Use Tax or Service Use Tax liability,
2 not to exceed 6.25% of the selling price, is being satisfied
3 with the credit. The manufacturer or graphic arts producer
4 shall remain liable to timely report all information required
5 by the annual Report of Manufacturer's Purchase Credit Used for
6 all credit utilized by a construction contractor.

7 The Manufacturer's Purchase Credit may be used to satisfy
8 liability under the Use Tax Act or the Service Use Tax Act due
9 on the purchase of production related tangible personal
10 property (including purchases by a manufacturer, by a graphic
11 arts producer, or by a lessor who rents or leases the use of
12 the property to a manufacturer or graphic arts producer) that
13 does not otherwise qualify for the manufacturing machinery and
14 equipment exemption or the graphic arts machinery and equipment
15 exemption. "Production related tangible personal property"
16 means (i) all tangible personal property used or consumed by
17 the purchaser in a manufacturing facility in which a
18 manufacturing process described in Section 2-45 of the
19 Retailers' Occupation Tax Act takes place, including tangible
20 personal property purchased for incorporation into real estate
21 within a manufacturing facility and including, but not limited
22 to, tangible personal property used or consumed in activities
23 such as preproduction material handling, receiving, quality
24 control, inventory control, storage, staging, and packaging
25 for shipping and transportation purposes; (ii) all tangible
26 personal property used or consumed by the purchaser in a
27 graphic arts facility in which graphic arts production as
28 described in Section 2-30 of the Retailers' Occupation Tax Act
29 takes place, including tangible personal property purchased
30 for incorporation into real estate within a graphic arts
31 facility and including, but not limited to, all tangible
32 personal property used or consumed in activities such as
33 graphic arts preliminary or pre-press production,
34 pre-production material handling, receiving, quality control,

1 inventory control, storage, staging, sorting, labeling,
2 mailing, tying, wrapping, and packaging; and (iii) all tangible
3 personal property used or consumed by the purchaser for
4 research and development. "Production related tangible
5 personal property" does not include (i) tangible personal
6 property used, within or without a manufacturing facility, in
7 sales, purchasing, accounting, fiscal management, marketing,
8 personnel recruitment or selection, or landscaping or (ii)
9 tangible personal property required to be titled or registered
10 with a department, agency, or unit of federal, state, or local
11 government. The Manufacturer's Purchase Credit may be used to
12 satisfy the tax arising either from the purchase of machinery
13 and equipment on or after July 1, 2004 for which the exemption
14 provided by paragraph (18) of Section 3-5 of this Act was
15 erroneously claimed, or the purchase of machinery and equipment
16 on or after July 1, 2004 for which the exemption provided by
17 paragraph (6) of Section 3-5 of this Act was erroneously
18 claimed, but not in satisfaction of penalty, if any, and
19 interest for failure to pay the tax when due. A purchaser of
20 production related tangible personal property that is
21 purchased on or after July 1, 2004 who is required to pay
22 Illinois Use Tax or Service Use Tax on the purchase directly to
23 the Department may utilize the Manufacturer's Purchase Credit
24 in satisfaction of the tax arising from that purchase, but not
25 in satisfaction of penalty and interest. A purchaser who uses
26 the Manufacturer's Purchase Credit to purchase property on and
27 after July 1, 2004 which is later determined not to be
28 production related tangible personal property may be liable for
29 tax, penalty, and interest on the purchase of that property as
30 of the date of purchase but shall be entitled to use the
31 disallowed Manufacturer's Purchase Credit, so long as it has
32 not expired and is used on qualifying purchases of production
33 related tangible personal property not previously subject to
34 credit usage. The Manufacturer's Purchase Credit earned by a

1 manufacturer or graphic arts producer expires the last day of
2 the second calendar year following the calendar year in which
3 the credit arose.

4 A purchaser earning Manufacturer's Purchase Credit shall
5 sign and file an annual Report of Manufacturer's Purchase
6 Credit Earned for each calendar year no later than the last day
7 of the sixth month following the calendar year in which a
8 Manufacturer's Purchase Credit is earned. A Report of
9 Manufacturer's Purchase Credit Earned shall be filed on forms
10 as prescribed or approved by the Department and shall state,
11 for each month of the calendar year: (i) the total purchase
12 price of all purchases of exempt manufacturing or graphic arts
13 machinery on which the credit was earned; (ii) the total State
14 Use Tax or Service Use Tax which would have been due on those
15 items; (iii) the percentage used to calculate the amount of
16 credit earned; (iv) the amount of credit earned; and (v) such
17 other information as the Department may reasonably require. A
18 purchaser earning Manufacturer's Purchase Credit shall
19 maintain records which identify, as to each purchase of
20 manufacturing or graphic arts machinery and equipment on which
21 the purchaser earned Manufacturer's Purchase Credit, the
22 vendor (including, if applicable, either the vendor's
23 registration number or Federal Employer Identification
24 Number), the purchase price, and the amount of Manufacturer's
25 Purchase Credit earned on each purchase.

26 A purchaser using Manufacturer's Purchase Credit shall
27 sign and file an annual Report of Manufacturer's Purchase
28 Credit Used for each calendar year no later than the last day
29 of the sixth month following the calendar year in which a
30 Manufacturer's Purchase Credit is used. A Report of
31 Manufacturer's Purchase Credit Used shall be filed on forms as
32 prescribed or approved by the Department and shall state, for
33 each month of the calendar year: (i) the total purchase price
34 of production related tangible personal property purchased

1 from Illinois suppliers; (ii) the total purchase price of
2 production related tangible personal property purchased from
3 out-of-state suppliers; (iii) the total amount of credit used
4 during such month; and (iv) such other information as the
5 Department may reasonably require. A purchaser using
6 Manufacturer's Purchase Credit shall maintain records that
7 identify, as to each purchase of production related tangible
8 personal property on which the purchaser used Manufacturer's
9 Purchase Credit, the vendor (including, if applicable, either
10 the vendor's registration number or Federal Employer
11 Identification Number), the purchase price, and the amount of
12 Manufacturer's Purchase Credit used on each purchase.

13 A purchaser that fails to file an annual Report of
14 Manufacturer's Purchase Credit Earned or an annual Report of
15 Manufacturer's Purchase Credit Used by the last day of the
16 sixth month following the end of the calendar year shall
17 forfeit all Manufacturer's Purchase Credit for that calendar
18 year unless it establishes that its failure to file was due to
19 reasonable cause. Manufacturer's Purchase Credit reports may
20 be amended to report and claim credit on qualifying purchases
21 not previously reported at any time before the credit would
22 have expired, unless both the Department and the purchaser have
23 agreed to an extension of the statute of limitations for the
24 issuance of a notice of tax liability as provided in Section 4
25 of the Retailers' Occupation Tax Act. If the time for
26 assessment or refund has been extended, then amended reports
27 for a calendar year may be filed at any time prior to the date
28 to which the statute of limitations for the calendar year or
29 portion thereof has been extended. Manufacturer's Purchase
30 Credit claimed on an amended report may be used to satisfy tax
31 liability under the Use Tax Act or the Service Use Tax Act (i)
32 on qualifying purchases of production related tangible
33 personal property made after the date the amended report is
34 filed or (ii) assessed by the Department on qualifying

1 purchases of production related tangible personal property
2 made on or after July 1, 2004. If the purchaser is not the
3 manufacturer or a graphic arts producer, but rents or leases
4 the use of the property to a manufacturer or graphic arts
5 producer, the purchaser may earn, report, and use
6 Manufacturer's Purchase Credit in the same manner as a
7 manufacturer or graphic arts producer. A purchaser shall not be
8 entitled to any Manufacturer's Purchase Credit for a purchase
9 that is required to be reported and is not timely reported as
10 provided in this Section. A purchaser remains liable for (i)
11 any tax that was satisfied by use of a Manufacturer's Purchase
12 Credit, as of the date of purchase, if that use is not timely
13 reported as required in this Section and (ii) for any
14 applicable penalties and interest for failing to pay the tax
15 when due.

16 (Source: P.A. 93-24, eff. 6-20-03.)

17 Section 12-10. The Service Use Tax Act is amended by
18 changing Section 3-70 as follows:

19 (35 ILCS 110/3-70)

20 Sec. 3-70. Manufacturer's Purchase Credit. For purchases
21 of machinery and equipment made on and after January 1, 1995
22 ~~and~~ through June 30, 2003, and on and after July 1, 2004, a
23 purchaser of manufacturing machinery and equipment that
24 qualifies for the exemption provided by Section 2 of this Act
25 earns a credit in an amount equal to a fixed percentage of the
26 tax which would have been incurred under this Act on those
27 purchases. For purchases of graphic arts machinery and
28 equipment made on or after July 1, 1996 ~~and~~ through June 30,
29 2003, and on and after July 1, 2004, a purchase of graphic arts
30 machinery and equipment that qualifies for the exemption
31 provided by paragraph (5) of Section 3-5 of this Act earns a
32 credit in an amount equal to a fixed percentage of the tax that

1 would have been incurred under this Act on those purchases. The
2 credit earned for the purchase of manufacturing machinery and
3 equipment and graphic arts machinery and equipment shall be
4 referred to as the Manufacturer's Purchase Credit. A graphic
5 arts producer is a person engaged in graphic arts production as
6 defined in Section 3-30 of the Service Occupation Tax Act.
7 Beginning July 1, 1996, all references in this Section to
8 manufacturers or manufacturing shall also refer to graphic arts
9 producers or graphic arts production.

10 The amount of credit shall be a percentage of the tax that
11 would have been incurred on the purchase of the manufacturing
12 machinery and equipment or graphic arts machinery and equipment
13 if the exemptions provided by Section 2 or paragraph (5) of
14 Section 3-5 of this Act had not been applicable.

15 All purchases prior to October 1, 2003 of manufacturing
16 machinery and equipment and graphic arts machinery and
17 equipment that qualify for the exemptions provided by paragraph
18 (5) of Section 2 or paragraph (5) of Section 3-5 of this Act
19 qualify for the credit without regard to whether the serviceman
20 elected, or could have elected, under paragraph (7) of Section
21 2 of this Act to exclude the transaction from this Act. If the
22 serviceman's billing to the service customer separately states
23 a selling price for the exempt manufacturing machinery or
24 equipment or the exempt graphic arts machinery and equipment,
25 the credit shall be calculated, as otherwise provided herein,
26 based on that selling price. If the serviceman's billing does
27 not separately state a selling price for the exempt
28 manufacturing machinery and equipment or the exempt graphic
29 arts machinery and equipment, the credit shall be calculated,
30 as otherwise provided herein, based on 50% of the entire
31 billing. If the serviceman contracts to design, develop, and
32 produce special order manufacturing machinery and equipment or
33 special order graphic arts machinery and equipment, and the
34 billing does not separately state a selling price for such

1 special order machinery and equipment, the credit shall be
2 calculated, as otherwise provided herein, based on 50% of the
3 entire billing. The provisions of this paragraph are effective
4 for purchases made on or after January 1, 1995.

5 The percentage shall be as follows:

6 (1) 15% for purchases made on or before June 30, 1995.

7 (2) 25% for purchases made after June 30, 1995, and on
8 or before June 30, 1996.

9 (3) 40% for purchases made after June 30, 1996, and on
10 or before June 30, 1997.

11 (4) 50% for purchases made on or after July 1, 1997.

12 (a) Manufacturer's Purchase Credit earned prior to July 1,
13 2003. This subsection (a) applies to Manufacturer's Purchase
14 Credit earned prior to July 1, 2003. A purchaser of production
15 related tangible personal property desiring to use the
16 Manufacturer's Purchase Credit shall certify to the seller
17 prior to October 1, 2003 that the purchaser is satisfying all
18 or part of the liability under the Use Tax Act or the Service
19 Use Tax Act that is due on the purchase of the production
20 related tangible personal property by use of a Manufacturer's
21 Purchase Credit. The Manufacturer's Purchase Credit
22 certification must be dated and shall include the name and
23 address of the purchaser, the purchaser's registration number,
24 if registered, the credit being applied, and a statement that
25 the State Use Tax or Service Use Tax liability is being
26 satisfied with the manufacturer's or graphic arts producer's
27 accumulated purchase credit. Certification may be incorporated
28 into the manufacturer's or graphic arts producer's purchase
29 order. Manufacturer's Purchase Credit certification provided
30 by the manufacturer or graphic arts producer prior to October
31 1, 2003 may be used to satisfy the retailer's or serviceman's
32 liability under the Retailers' Occupation Tax Act or Service
33 Occupation Tax Act for the credit claimed, not to exceed 6.25%
34 of the receipts subject to tax from a qualifying purchase, but

1 only if the retailer or serviceman reports the Manufacturer's
2 Purchase Credit claimed as required by the Department. A
3 Manufacturer's Purchase Credit reported on any original or
4 amended return filed under this Act after October 20, 2003
5 shall be disallowed. The Manufacturer's Purchase Credit earned
6 by purchase of exempt manufacturing machinery and equipment or
7 graphic arts machinery and equipment is a non-transferable
8 credit. A manufacturer or graphic arts producer that enters
9 into a contract involving the installation of tangible personal
10 property into real estate within a manufacturing or graphic
11 arts production facility, prior to October 1, 2003, may
12 authorize a construction contractor to utilize credit
13 accumulated by the manufacturer or graphic arts producer to
14 purchase the tangible personal property. A manufacturer or
15 graphic arts producer intending to use accumulated credit to
16 purchase such tangible personal property shall execute a
17 written contract authorizing the contractor to utilize a
18 specified dollar amount of credit. The contractor shall
19 furnish, prior to October 1, 2003, the supplier with the
20 manufacturer's or graphic arts producer's name, registration
21 or resale number, and a statement that a specific amount of the
22 Use Tax or Service Use Tax liability, not to exceed 6.25% of
23 the selling price, is being satisfied with the credit. The
24 manufacturer or graphic arts producer shall remain liable to
25 timely report all information required by the annual Report of
26 Manufacturer's Purchase Credit Used for credit utilized by a
27 construction contractor.

28 No Manufacturer's Purchase Credit earned prior to July 1,
29 2003 may be used after October 1, 2003. The Manufacturer's
30 Purchase Credit may be used to satisfy liability under the Use
31 Tax Act or the Service Use Tax Act due on the purchase of
32 production related tangible personal property (including
33 purchases by a manufacturer, by a graphic arts producer, or a
34 lessor who rents or leases the use of the property to a

1 manufacturer or graphic arts producer) that does not otherwise
2 qualify for the manufacturing machinery and equipment
3 exemption or the graphic arts machinery and equipment
4 exemption. "Production related tangible personal property"
5 means (i) all tangible personal property used or consumed by
6 the purchaser in a manufacturing facility in which a
7 manufacturing process described in Section 2-45 of the
8 Retailers' Occupation Tax Act takes place, including tangible
9 personal property purchased for incorporation into real estate
10 within a manufacturing facility and including, but not limited
11 to, tangible personal property used or consumed in activities
12 such as pre-production material handling, receiving, quality
13 control, inventory control, storage, staging, and packaging
14 for shipping and transportation purposes; (ii) all tangible
15 personal property used or consumed by the purchaser in a
16 graphic arts facility in which graphic arts production as
17 described in Section 2-30 of the Retailers' Occupation Tax Act
18 takes place, including tangible personal property purchased
19 for incorporation into real estate within a graphic arts
20 facility and including, but not limited to, all tangible
21 personal property used or consumed in activities such as
22 graphic arts preliminary or pre-press production,
23 pre-production material handling, receiving, quality control,
24 inventory control, storage, staging, sorting, labeling,
25 mailing, tying, wrapping, and packaging; and (iii) all tangible
26 personal property used or consumed by the purchaser for
27 research and development. "Production related tangible
28 personal property" does not include (i) tangible personal
29 property used, within or without a manufacturing or graphic
30 arts facility, in sales, purchasing, accounting, fiscal
31 management, marketing, personnel recruitment or selection, or
32 landscaping or (ii) tangible personal property required to be
33 titled or registered with a department, agency, or unit of
34 federal, state, or local government. The Manufacturer's

1 Purchase Credit may be used, prior to October 1, 2003, to
2 satisfy the tax arising either from the purchase of machinery
3 and equipment on or after January 1, 1995 for which the
4 manufacturing machinery and equipment exemption provided by
5 Section 2 of this Act was erroneously claimed, or the purchase
6 of machinery and equipment on or after July 1, 1996 for which
7 the exemption provided by paragraph (5) of Section 3-5 of this
8 Act was erroneously claimed, but not in satisfaction of
9 penalty, if any, and interest for failure to pay the tax when
10 due. A purchaser of production related tangible personal
11 property who is required to pay Illinois Use Tax or Service Use
12 Tax on the purchase directly to the Department may, prior to
13 October 1, 2003, utilize the Manufacturer's Purchase Credit in
14 satisfaction of the tax arising from that purchase, but not in
15 satisfaction of penalty and interest. A purchaser who uses the
16 Manufacturer's Purchase Credit to purchase property which is
17 later determined not to be production related tangible personal
18 property may be liable for tax, penalty, and interest on the
19 purchase of that property as of the date of purchase but shall
20 be entitled to use the disallowed Manufacturer's Purchase
21 Credit, so long as it has not expired and is used prior to
22 October 1, 2003, on qualifying purchases of production related
23 tangible personal property not previously subject to credit
24 usage. The Manufacturer's Purchase Credit earned by a
25 manufacturer or graphic arts producer expires the last day of
26 the second calendar year following the calendar year in which
27 the credit arose. No Manufacturer's Purchase Credit may be used
28 after September 30, 2003 regardless of when that credit was
29 earned.

30 A purchaser earning Manufacturer's Purchase Credit shall
31 sign and file an annual Report of Manufacturer's Purchase
32 Credit Earned for each calendar year no later than the last day
33 of the sixth month following the calendar year in which a
34 Manufacturer's Purchase Credit is earned. A Report of

1 Manufacturer's Purchase Credit Earned shall be filed on forms
2 as prescribed or approved by the Department and shall state,
3 for each month of the calendar year: (i) the total purchase
4 price of all purchases of exempt manufacturing or graphic arts
5 machinery on which the credit was earned; (ii) the total State
6 Use Tax or Service Use Tax which would have been due on those
7 items; (iii) the percentage used to calculate the amount of
8 credit earned; (iv) the amount of credit earned; and (v) such
9 other information as the Department may reasonably require. A
10 purchaser earning Manufacturer's Purchase Credit shall
11 maintain records which identify, as to each purchase of
12 manufacturing or graphic arts machinery and equipment on which
13 the purchaser earned Manufacturer's Purchase Credit, the
14 vendor (including, if applicable, either the vendor's
15 registration number or Federal Employer Identification
16 Number), the purchase price, and the amount of Manufacturer's
17 Purchase Credit earned on each purchase.

18 A purchaser using Manufacturer's Purchase Credit shall
19 sign and file an annual Report of Manufacturer's Purchase
20 Credit Used for each calendar year no later than the last day
21 of the sixth month following the calendar year in which a
22 Manufacturer's Purchase Credit is used. A Report of
23 Manufacturer's Purchase Credit Used shall be filed on forms as
24 prescribed or approved by the Department and shall state, for
25 each month of the calendar year: (i) the total purchase price
26 of production related tangible personal property purchased
27 from Illinois suppliers; (ii) the total purchase price of
28 production related tangible personal property purchased from
29 out-of-state suppliers; (iii) the total amount of credit used
30 during such month; and (iv) such other information as the
31 Department may reasonably require. A purchaser using
32 Manufacturer's Purchase Credit shall maintain records that
33 identify, as to each purchase of production related tangible
34 personal property on which the purchaser used Manufacturer's

1 Purchase Credit, the vendor (including, if applicable, either
2 the vendor's registration number or Federal Employer
3 Identification Number), the purchase price, and the amount of
4 Manufacturer's Purchase Credit used on each purchase.

5 No annual report shall be filed before May 1, 1996 or after
6 June 30, 2004. A purchaser that fails to file an annual Report
7 of Manufacturer's Purchase Credit Earned or an annual Report of
8 Manufacturer's Purchase Credit Used by the last day of the
9 sixth month following the end of the calendar year shall
10 forfeit all Manufacturer's Purchase Credit for that calendar
11 year unless it establishes that its failure to file was due to
12 reasonable cause. Manufacturer's Purchase Credit reports may
13 be amended to report and claim credit on qualifying purchases
14 not previously reported at any time before the credit would
15 have expired, unless both the Department and the purchaser have
16 agreed to an extension of the statute of limitations for the
17 issuance of a notice of tax liability as provided in Section 4
18 of the Retailers' Occupation Tax Act. If the time for
19 assessment or refund has been extended, then amended reports
20 for a calendar year may be filed at any time prior to the date
21 to which the statute of limitations for the calendar year or
22 portion thereof has been extended. No Manufacturer's Purchase
23 Credit report filed with the Department for periods prior to
24 January 1, 1995 shall be approved. Manufacturer's Purchase
25 Credit claimed on an amended report may be used, prior to
26 October 1, 2003, to satisfy tax liability under the Use Tax Act
27 or the Service Use Tax Act (i) on qualifying purchases of
28 production related tangible personal property made after the
29 date the amended report is filed or (ii) assessed by the
30 Department on qualifying purchases of production related
31 tangible personal property made in the case of manufacturers on
32 or after January 1, 1995, or in the case of graphic arts
33 producers on or after July 1, 1996.

34 If the purchaser is not the manufacturer or a graphic arts

1 producer, but rents or leases the use of the property to a
2 manufacturer or a graphic arts producer, the purchaser may
3 earn, report, and use Manufacturer's Purchase Credit in the
4 same manner as a manufacturer or graphic arts producer.

5 A purchaser shall not be entitled to any Manufacturer's
6 Purchase Credit for a purchase that is required to be reported
7 and is not timely reported as provided in this Section. A
8 purchaser remains liable for (i) any tax that was satisfied by
9 use of a Manufacturer's Purchase Credit, as of the date of
10 purchase, if that use is not timely reported as required in
11 this Section and (ii) for any applicable penalties and interest
12 for failing to pay the tax when due. No Manufacturer's Purchase
13 Credit may be used after September 30, 2003 to satisfy any tax
14 liability imposed under this Act, including any audit
15 liability.

16 (b) Manufacturer's Purchase Credit earned on and after July
17 1, 2004. This subsection (b) applies to Manufacturer's Purchase
18 Credit earned on or after July 1, 2004. A purchaser of
19 production related tangible personal property desiring to use
20 the Manufacturer's Purchase Credit shall certify to the seller
21 that the purchaser is satisfying all or part of the liability
22 under the Use Tax Act or the Service Use Tax Act that is due on
23 the purchase of the production related tangible personal
24 property by use of a Manufacturer's Purchase Credit. The
25 Manufacturer's Purchase Credit certification must be dated and
26 shall include the name and address of the purchaser, the
27 purchaser's registration number, if registered, the credit
28 being applied, and a statement that the State Use Tax or
29 Service Use Tax liability is being satisfied with the
30 manufacturer's or graphic arts producer's accumulated purchase
31 credit. Certification may be incorporated into the
32 manufacturer's or graphic arts producer's purchase order.
33 Manufacturer's Purchase Credit certification provided by the
34 manufacturer or graphic arts producer may be used to satisfy

1 the retailer's or serviceman's liability under the Retailers'
2 Occupation Tax Act or Service Occupation Tax Act for the credit
3 claimed, not to exceed 6.25% of the receipts subject to tax
4 from a qualifying purchase, but only if the retailer or
5 serviceman reports the Manufacturer's Purchase Credit claimed
6 as required by the Department. The Manufacturer's Purchase
7 Credit earned by purchase of exempt manufacturing machinery and
8 equipment or graphic arts machinery and equipment is a
9 non-transferable credit. A manufacturer or graphic arts
10 producer that enters into a contract involving the installation
11 of tangible personal property into real estate within a
12 manufacturing or graphic arts production facility may, on or
13 after July 1, 2004, authorize a construction contractor to
14 utilize credit accumulated by the manufacturer or graphic arts
15 producer to purchase the tangible personal property. A
16 manufacturer or graphic arts producer intending to use
17 accumulated credit to purchase such tangible personal property
18 shall execute a written contract authorizing the contractor to
19 utilize a specified dollar amount of credit. The contractor
20 shall furnish the supplier with the manufacturer's or graphic
21 arts producer's name, registration or resale number, and a
22 statement that a specific amount of the Use Tax or Service Use
23 Tax liability, not to exceed 6.25% of the selling price, is
24 being satisfied with the credit. The manufacturer or graphic
25 arts producer shall remain liable to timely report all
26 information required by the annual Report of Manufacturer's
27 Purchase Credit Used for credit utilized by a construction
28 contractor.

29 The Manufacturer's Purchase Credit may be used to satisfy
30 liability under the Use Tax Act or the Service Use Tax Act due
31 on the purchase of production related tangible personal
32 property (including purchases by a manufacturer, by a graphic
33 arts producer, or a lessor who rents or leases the use of the
34 property to a manufacturer or graphic arts producer) that does

1 not otherwise qualify for the manufacturing machinery and
2 equipment exemption or the graphic arts machinery and equipment
3 exemption. "Production related tangible personal property"
4 means (i) all tangible personal property used or consumed by
5 the purchaser in a manufacturing facility in which a
6 manufacturing process described in Section 2-45 of the
7 Retailers' Occupation Tax Act takes place, including tangible
8 personal property purchased for incorporation into real estate
9 within a manufacturing facility and including, but not limited
10 to, tangible personal property used or consumed in activities
11 such as pre-production material handling, receiving, quality
12 control, inventory control, storage, staging, and packaging
13 for shipping and transportation purposes; (ii) all tangible
14 personal property used or consumed by the purchaser in a
15 graphic arts facility in which graphic arts production as
16 described in Section 2-30 of the Retailers' Occupation Tax Act
17 takes place, including tangible personal property purchased
18 for incorporation into real estate within a graphic arts
19 facility and including, but not limited to, all tangible
20 personal property used or consumed in activities such as
21 graphic arts preliminary or pre-press production,
22 pre-production material handling, receiving, quality control,
23 inventory control, storage, staging, sorting, labeling,
24 mailing, tying, wrapping, and packaging; and (iii) all tangible
25 personal property used or consumed by the purchaser for
26 research and development. "Production related tangible
27 personal property" does not include (i) tangible personal
28 property used, within or without a manufacturing or graphic
29 arts facility, in sales, purchasing, accounting, fiscal
30 management, marketing, personnel recruitment or selection, or
31 landscaping or (ii) tangible personal property required to be
32 titled or registered with a department, agency, or unit of
33 federal, state, or local government. The Manufacturer's
34 Purchase Credit may be used to satisfy the tax arising either

1 from the purchase of machinery and equipment on or after July
2 1, 2004 for which the manufacturing machinery and equipment
3 exemption provided by Section 2 of this Act was erroneously
4 claimed, or the purchase of machinery and equipment on or after
5 July 1, 2004 for which the exemption provided by paragraph (5)
6 of Section 3-5 of this Act was erroneously claimed, but not in
7 satisfaction of penalty, if any, and interest for failure to
8 pay the tax when due. A purchaser of production related
9 tangible personal property that is purchased on or after July
10 1, 2004 who is required to pay Illinois Use Tax or Service Use
11 Tax on the purchase directly to the Department may utilize the
12 Manufacturer's Purchase Credit in satisfaction of the tax
13 arising from that purchase, but not in satisfaction of penalty
14 and interest. A purchaser who uses the Manufacturer's Purchase
15 Credit to purchase property on and after July 1, 2004 which is
16 later determined not to be production related tangible personal
17 property may be liable for tax, penalty, and interest on the
18 purchase of that property as of the date of purchase but shall
19 be entitled to use the disallowed Manufacturer's Purchase
20 Credit, so long as it has not expired, on qualifying purchases
21 of production related tangible personal property not
22 previously subject to credit usage. The Manufacturer's
23 Purchase Credit earned by a manufacturer or graphic arts
24 producer expires the last day of the second calendar year
25 following the calendar year in which the credit arose.

26 A purchaser earning Manufacturer's Purchase Credit shall
27 sign and file an annual Report of Manufacturer's Purchase
28 Credit Earned for each calendar year no later than the last day
29 of the sixth month following the calendar year in which a
30 Manufacturer's Purchase Credit is earned. A Report of
31 Manufacturer's Purchase Credit Earned shall be filed on forms
32 as prescribed or approved by the Department and shall state,
33 for each month of the calendar year: (i) the total purchase
34 price of all purchases of exempt manufacturing or graphic arts

1 machinery on which the credit was earned; (ii) the total State
2 Use Tax or Service Use Tax which would have been due on those
3 items; (iii) the percentage used to calculate the amount of
4 credit earned; (iv) the amount of credit earned; and (v) such
5 other information as the Department may reasonably require. A
6 purchaser earning Manufacturer's Purchase Credit shall
7 maintain records which identify, as to each purchase of
8 manufacturing or graphic arts machinery and equipment on which
9 the purchaser earned Manufacturer's Purchase Credit, the
10 vendor (including, if applicable, either the vendor's
11 registration number or Federal Employer Identification
12 Number), the purchase price, and the amount of Manufacturer's
13 Purchase Credit earned on each purchase.

14 A purchaser using Manufacturer's Purchase Credit shall
15 sign and file an annual Report of Manufacturer's Purchase
16 Credit Used for each calendar year no later than the last day
17 of the sixth month following the calendar year in which a
18 Manufacturer's Purchase Credit is used. A Report of
19 Manufacturer's Purchase Credit Used shall be filed on forms as
20 prescribed or approved by the Department and shall state, for
21 each month of the calendar year: (i) the total purchase price
22 of production related tangible personal property purchased
23 from Illinois suppliers; (ii) the total purchase price of
24 production related tangible personal property purchased from
25 out-of-state suppliers; (iii) the total amount of credit used
26 during such month; and (iv) such other information as the
27 Department may reasonably require. A purchaser using
28 Manufacturer's Purchase Credit shall maintain records that
29 identify, as to each purchase of production related tangible
30 personal property on which the purchaser used Manufacturer's
31 Purchase Credit, the vendor (including, if applicable, either
32 the vendor's registration number or Federal Employer
33 Identification Number), the purchase price, and the amount of
34 Manufacturer's Purchase Credit used on each purchase.

1 A purchaser that fails to file an annual Report of
2 Manufacturer's Purchase Credit Earned or an annual Report of
3 Manufacturer's Purchase Credit Used by the last day of the
4 sixth month following the end of the calendar year shall
5 forfeit all Manufacturer's Purchase Credit for that calendar
6 year unless it establishes that its failure to file was due to
7 reasonable cause. Manufacturer's Purchase Credit reports may
8 be amended to report and claim credit on qualifying purchases
9 not previously reported at any time before the credit would
10 have expired, unless both the Department and the purchaser have
11 agreed to an extension of the statute of limitations for the
12 issuance of a notice of tax liability as provided in Section 4
13 of the Retailers' Occupation Tax Act. If the time for
14 assessment or refund has been extended, then amended reports
15 for a calendar year may be filed at any time prior to the date
16 to which the statute of limitations for the calendar year or
17 portion thereof has been extended. Manufacturer's Purchase
18 Credit claimed on an amended report may be used to satisfy tax
19 liability under the Use Tax Act or the Service Use Tax Act (i)
20 on qualifying purchases of production related tangible
21 personal property made after the date the amended report is
22 filed or (ii) assessed by the Department on qualifying
23 purchases of production related tangible personal property
24 made on or after July 1, 2004.

25 If the purchaser is not the manufacturer or a graphic arts
26 producer, but rents or leases the use of the property to a
27 manufacturer or a graphic arts producer, the purchaser may
28 earn, report, and use Manufacturer's Purchase Credit in the
29 same manner as a manufacturer or graphic arts producer. A
30 purchaser shall not be entitled to any Manufacturer's Purchase
31 Credit for a purchase that is required to be reported and is
32 not timely reported as provided in this Section. A purchaser
33 remains liable for (i) any tax that was satisfied by use of a
34 Manufacturer's Purchase Credit, as of the date of purchase, if

1 that use is not timely reported as required in this Section and
2 (ii) for any applicable penalties and interest for failing to
3 pay the tax when due.

4 (Source: P.A. 93-24, eff. 6-20-03.)

5 Section 12-15. The Service Occupation Tax Act is amended by
6 changing Section 9 as follows:

7 (35 ILCS 115/9) (from Ch. 120, par. 439.109)

8 Sec. 9. Each serviceman required or authorized to collect
9 the tax herein imposed shall pay to the Department the amount
10 of such tax at the time when he is required to file his return
11 for the period during which such tax was collectible, less a
12 discount of 2.1% prior to January 1, 1990, and 1.75% on and
13 after January 1, 1990, or \$5 per calendar year, whichever is
14 greater, which is allowed to reimburse the serviceman for
15 expenses incurred in collecting the tax, keeping records,
16 preparing and filing returns, remitting the tax and supplying
17 data to the Department on request.

18 Where such tangible personal property is sold under a
19 conditional sales contract, or under any other form of sale
20 wherein the payment of the principal sum, or a part thereof, is
21 extended beyond the close of the period for which the return is
22 filed, the serviceman, in collecting the tax may collect, for
23 each tax return period, only the tax applicable to the part of
24 the selling price actually received during such tax return
25 period.

26 Except as provided hereinafter in this Section, on or
27 before the twentieth day of each calendar month, such
28 serviceman shall file a return for the preceding calendar month
29 in accordance with reasonable rules and regulations to be
30 promulgated by the Department of Revenue. Such return shall be
31 filed on a form prescribed by the Department and shall contain
32 such information as the Department may reasonably require.

1 The Department may require returns to be filed on a
2 quarterly basis. If so required, a return for each calendar
3 quarter shall be filed on or before the twentieth day of the
4 calendar month following the end of such calendar quarter. The
5 taxpayer shall also file a return with the Department for each
6 of the first two months of each calendar quarter, on or before
7 the twentieth day of the following calendar month, stating:

8 1. The name of the seller;

9 2. The address of the principal place of business from
10 which he engages in business as a serviceman in this State;

11 3. The total amount of taxable receipts received by him
12 during the preceding calendar month, including receipts
13 from charge and time sales, but less all deductions allowed
14 by law;

15 4. The amount of credit provided in Section 2d of this
16 Act;

17 5. The amount of tax due;

18 5-5. The signature of the taxpayer; and

19 6. Such other reasonable information as the Department
20 may require.

21 If a taxpayer fails to sign a return within 30 days after
22 the proper notice and demand for signature by the Department,
23 the return shall be considered valid and any amount shown to be
24 due on the return shall be deemed assessed.

25 Prior to October 1, 2003 and on and after July 1, 2004, a
26 serviceman may accept a Manufacturer's Purchase Credit
27 certification from a purchaser in satisfaction of Service Use
28 Tax as provided in Section 3-70 of the Service Use Tax Act if
29 the purchaser provides the appropriate documentation as
30 required by Section 3-70 of the Service Use Tax Act. A
31 Manufacturer's Purchase Credit certification, accepted prior
32 to October 1, 2003 and on and after July 1, 2004 by a
33 serviceman as provided in Section 3-70 of the Service Use Tax
34 Act, may be used by that serviceman to satisfy Service

1 Occupation Tax liability in the amount claimed in the
2 certification, not to exceed 6.25% of the receipts subject to
3 tax from a qualifying purchase. A Manufacturer's Purchase
4 Credit reported on any original or amended return filed under
5 this Act after October 20, 2003 for reporting periods prior to
6 July 1, 2004 shall be disallowed. Manufacturer's Purchase
7 Credit reported on annual returns due on or after January 1,
8 2005 will be disallowed for periods prior to July 1, 2004. No
9 Manufacturer's Purchase Credit may be used after September 30,
10 2003 through June 30, 2004 to satisfy any tax liability imposed
11 under this Act, including any audit liability.

12 If the serviceman's average monthly tax liability to the
13 Department does not exceed \$200, the Department may authorize
14 his returns to be filed on a quarter annual basis, with the
15 return for January, February and March of a given year being
16 due by April 20 of such year; with the return for April, May
17 and June of a given year being due by July 20 of such year; with
18 the return for July, August and September of a given year being
19 due by October 20 of such year, and with the return for
20 October, November and December of a given year being due by
21 January 20 of the following year.

22 If the serviceman's average monthly tax liability to the
23 Department does not exceed \$50, the Department may authorize
24 his returns to be filed on an annual basis, with the return for
25 a given year being due by January 20 of the following year.

26 Such quarter annual and annual returns, as to form and
27 substance, shall be subject to the same requirements as monthly
28 returns.

29 Notwithstanding any other provision in this Act concerning
30 the time within which a serviceman may file his return, in the
31 case of any serviceman who ceases to engage in a kind of
32 business which makes him responsible for filing returns under
33 this Act, such serviceman shall file a final return under this
34 Act with the Department not more than 1 month after

1 discontinuing such business.

2 Beginning October 1, 1993, a taxpayer who has an average
3 monthly tax liability of \$150,000 or more shall make all
4 payments required by rules of the Department by electronic
5 funds transfer. Beginning October 1, 1994, a taxpayer who has
6 an average monthly tax liability of \$100,000 or more shall make
7 all payments required by rules of the Department by electronic
8 funds transfer. Beginning October 1, 1995, a taxpayer who has
9 an average monthly tax liability of \$50,000 or more shall make
10 all payments required by rules of the Department by electronic
11 funds transfer. Beginning October 1, 2000, a taxpayer who has
12 an annual tax liability of \$200,000 or more shall make all
13 payments required by rules of the Department by electronic
14 funds transfer. The term "annual tax liability" shall be the
15 sum of the taxpayer's liabilities under this Act, and under all
16 other State and local occupation and use tax laws administered
17 by the Department, for the immediately preceding calendar year.
18 The term "average monthly tax liability" means the sum of the
19 taxpayer's liabilities under this Act, and under all other
20 State and local occupation and use tax laws administered by the
21 Department, for the immediately preceding calendar year
22 divided by 12. Beginning on October 1, 2002, a taxpayer who has
23 a tax liability in the amount set forth in subsection (b) of
24 Section 2505-210 of the Department of Revenue Law shall make
25 all payments required by rules of the Department by electronic
26 funds transfer.

27 Before August 1 of each year beginning in 1993, the
28 Department shall notify all taxpayers required to make payments
29 by electronic funds transfer. All taxpayers required to make
30 payments by electronic funds transfer shall make those payments
31 for a minimum of one year beginning on October 1.

32 Any taxpayer not required to make payments by electronic
33 funds transfer may make payments by electronic funds transfer
34 with the permission of the Department.

1 All taxpayers required to make payment by electronic funds
2 transfer and any taxpayers authorized to voluntarily make
3 payments by electronic funds transfer shall make those payments
4 in the manner authorized by the Department.

5 The Department shall adopt such rules as are necessary to
6 effectuate a program of electronic funds transfer and the
7 requirements of this Section.

8 Where a serviceman collects the tax with respect to the
9 selling price of tangible personal property which he sells and
10 the purchaser thereafter returns such tangible personal
11 property and the serviceman refunds the selling price thereof
12 to the purchaser, such serviceman shall also refund, to the
13 purchaser, the tax so collected from the purchaser. When filing
14 his return for the period in which he refunds such tax to the
15 purchaser, the serviceman may deduct the amount of the tax so
16 refunded by him to the purchaser from any other Service
17 Occupation Tax, Service Use Tax, Retailers' Occupation Tax or
18 Use Tax which such serviceman may be required to pay or remit
19 to the Department, as shown by such return, provided that the
20 amount of the tax to be deducted shall previously have been
21 remitted to the Department by such serviceman. If the
22 serviceman shall not previously have remitted the amount of
23 such tax to the Department, he shall be entitled to no
24 deduction hereunder upon refunding such tax to the purchaser.

25 If experience indicates such action to be practicable, the
26 Department may prescribe and furnish a combination or joint
27 return which will enable servicemen, who are required to file
28 returns hereunder and also under the Retailers' Occupation Tax
29 Act, the Use Tax Act or the Service Use Tax Act, to furnish all
30 the return information required by all said Acts on the one
31 form.

32 Where the serviceman has more than one business registered
33 with the Department under separate registrations hereunder,
34 such serviceman shall file separate returns for each registered

1 business.

2 Beginning January 1, 1990, each month the Department shall
3 pay into the Local Government Tax Fund the revenue realized for
4 the preceding month from the 1% tax on sales of food for human
5 consumption which is to be consumed off the premises where it
6 is sold (other than alcoholic beverages, soft drinks and food
7 which has been prepared for immediate consumption) and
8 prescription and nonprescription medicines, drugs, medical
9 appliances and insulin, urine testing materials, syringes and
10 needles used by diabetics.

11 Beginning January 1, 1990, each month the Department shall
12 pay into the County and Mass Transit District Fund 4% of the
13 revenue realized for the preceding month from the 6.25% general
14 rate.

15 Beginning August 1, 2000, each month the Department shall
16 pay into the County and Mass Transit District Fund 20% of the
17 net revenue realized for the preceding month from the 1.25%
18 rate on the selling price of motor fuel and gasohol.

19 Beginning January 1, 1990, each month the Department shall
20 pay into the Local Government Tax Fund 16% of the revenue
21 realized for the preceding month from the 6.25% general rate on
22 transfers of tangible personal property.

23 Beginning August 1, 2000, each month the Department shall
24 pay into the Local Government Tax Fund 80% of the net revenue
25 realized for the preceding month from the 1.25% rate on the
26 selling price of motor fuel and gasohol.

27 Of the remainder of the moneys received by the Department
28 pursuant to this Act, (a) 1.75% thereof shall be paid into the
29 Build Illinois Fund and (b) prior to July 1, 1989, 2.2% and on
30 and after July 1, 1989, 3.8% thereof shall be paid into the
31 Build Illinois Fund; provided, however, that if in any fiscal
32 year the sum of (1) the aggregate of 2.2% or 3.8%, as the case
33 may be, of the moneys received by the Department and required
34 to be paid into the Build Illinois Fund pursuant to Section 3

1 of the Retailers' Occupation Tax Act, Section 9 of the Use Tax
2 Act, Section 9 of the Service Use Tax Act, and Section 9 of the
3 Service Occupation Tax Act, such Acts being hereinafter called
4 the "Tax Acts" and such aggregate of 2.2% or 3.8%, as the case
5 may be, of moneys being hereinafter called the "Tax Act
6 Amount", and (2) the amount transferred to the Build Illinois
7 Fund from the State and Local Sales Tax Reform Fund shall be
8 less than the Annual Specified Amount (as defined in Section 3
9 of the Retailers' Occupation Tax Act), an amount equal to the
10 difference shall be immediately paid into the Build Illinois
11 Fund from other moneys received by the Department pursuant to
12 the Tax Acts; and further provided, that if on the last
13 business day of any month the sum of (1) the Tax Act Amount
14 required to be deposited into the Build Illinois Account in the
15 Build Illinois Fund during such month and (2) the amount
16 transferred during such month to the Build Illinois Fund from
17 the State and Local Sales Tax Reform Fund shall have been less
18 than 1/12 of the Annual Specified Amount, an amount equal to
19 the difference shall be immediately paid into the Build
20 Illinois Fund from other moneys received by the Department
21 pursuant to the Tax Acts; and, further provided, that in no
22 event shall the payments required under the preceding proviso
23 result in aggregate payments into the Build Illinois Fund
24 pursuant to this clause (b) for any fiscal year in excess of
25 the greater of (i) the Tax Act Amount or (ii) the Annual
26 Specified Amount for such fiscal year; and, further provided,
27 that the amounts payable into the Build Illinois Fund under
28 this clause (b) shall be payable only until such time as the
29 aggregate amount on deposit under each trust indenture securing
30 Bonds issued and outstanding pursuant to the Build Illinois
31 Bond Act is sufficient, taking into account any future
32 investment income, to fully provide, in accordance with such
33 indenture, for the defeasance of or the payment of the
34 principal of, premium, if any, and interest on the Bonds

1 secured by such indenture and on any Bonds expected to be
2 issued thereafter and all fees and costs payable with respect
3 thereto, all as certified by the Director of the Bureau of the
4 Budget (now Governor's Office of Management and Budget). If on
5 the last business day of any month in which Bonds are
6 outstanding pursuant to the Build Illinois Bond Act, the
7 aggregate of the moneys deposited in the Build Illinois Bond
8 Account in the Build Illinois Fund in such month shall be less
9 than the amount required to be transferred in such month from
10 the Build Illinois Bond Account to the Build Illinois Bond
11 Retirement and Interest Fund pursuant to Section 13 of the
12 Build Illinois Bond Act, an amount equal to such deficiency
13 shall be immediately paid from other moneys received by the
14 Department pursuant to the Tax Acts to the Build Illinois Fund;
15 provided, however, that any amounts paid to the Build Illinois
16 Fund in any fiscal year pursuant to this sentence shall be
17 deemed to constitute payments pursuant to clause (b) of the
18 preceding sentence and shall reduce the amount otherwise
19 payable for such fiscal year pursuant to clause (b) of the
20 preceding sentence. The moneys received by the Department
21 pursuant to this Act and required to be deposited into the
22 Build Illinois Fund are subject to the pledge, claim and charge
23 set forth in Section 12 of the Build Illinois Bond Act.

24 Subject to payment of amounts into the Build Illinois Fund
25 as provided in the preceding paragraph or in any amendment
26 thereto hereafter enacted, the following specified monthly
27 installment of the amount requested in the certificate of the
28 Chairman of the Metropolitan Pier and Exposition Authority
29 provided under Section 8.25f of the State Finance Act, but not
30 in excess of the sums designated as "Total Deposit", shall be
31 deposited in the aggregate from collections under Section 9 of
32 the Use Tax Act, Section 9 of the Service Use Tax Act, Section
33 9 of the Service Occupation Tax Act, and Section 3 of the
34 Retailers' Occupation Tax Act into the McCormick Place

1 Expansion Project Fund in the specified fiscal years.

2	Fiscal Year	Total Deposit
3	1993	\$0
4	1994	53,000,000
5	1995	58,000,000
6	1996	61,000,000
7	1997	64,000,000
8	1998	68,000,000
9	1999	71,000,000
10	2000	75,000,000
11	2001	80,000,000
12	2002	93,000,000
13	2003	99,000,000
14	2004	103,000,000
15	2005	108,000,000
16	2006	113,000,000
17	2007	119,000,000
18	2008	126,000,000
19	2009	132,000,000
20	2010	139,000,000
21	2011	146,000,000
22	2012	153,000,000
23	2013	161,000,000
24	2014	170,000,000
25	2015	179,000,000
26	2016	189,000,000
27	2017	199,000,000
28	2018	210,000,000
29	2019	221,000,000
30	2020	233,000,000
31	2021	246,000,000
32	2022	260,000,000
33	2023 and	275,000,000

1 each fiscal year
2 thereafter that bonds
3 are outstanding under
4 Section 13.2 of the
5 Metropolitan Pier and
6 Exposition Authority Act,
7 but not after fiscal year 2042.

8 Beginning July 20, 1993 and in each month of each fiscal
9 year thereafter, one-eighth of the amount requested in the
10 certificate of the Chairman of the Metropolitan Pier and
11 Exposition Authority for that fiscal year, less the amount
12 deposited into the McCormick Place Expansion Project Fund by
13 the State Treasurer in the respective month under subsection
14 (g) of Section 13 of the Metropolitan Pier and Exposition
15 Authority Act, plus cumulative deficiencies in the deposits
16 required under this Section for previous months and years,
17 shall be deposited into the McCormick Place Expansion Project
18 Fund, until the full amount requested for the fiscal year, but
19 not in excess of the amount specified above as "Total Deposit",
20 has been deposited.

21 Subject to payment of amounts into the Build Illinois Fund
22 and the McCormick Place Expansion Project Fund pursuant to the
23 preceding paragraphs or in any amendments thereto hereafter
24 enacted, beginning July 1, 1993, the Department shall each
25 month pay into the Illinois Tax Increment Fund 0.27% of 80% of
26 the net revenue realized for the preceding month from the 6.25%
27 general rate on the selling price of tangible personal
28 property.

29 Subject to payment of amounts into the Build Illinois Fund
30 and the McCormick Place Expansion Project Fund pursuant to the
31 preceding paragraphs or in any amendments thereto hereafter
32 enacted, beginning with the receipt of the first report of
33 taxes paid by an eligible business and continuing for a 25-year
34 period, the Department shall each month pay into the Energy

1 Infrastructure Fund 80% of the net revenue realized from the
2 6.25% general rate on the selling price of Illinois-mined coal
3 that was sold to an eligible business. For purposes of this
4 paragraph, the term "eligible business" means a new electric
5 generating facility certified pursuant to Section 605-332 of
6 the Department of Commerce and Economic Opportunity Community
7 ~~Affairs~~ Law of the Civil Administrative Code of Illinois.

8 Remaining moneys received by the Department pursuant to
9 this Act shall be paid into the General Revenue Fund of the
10 State Treasury.

11 The Department may, upon separate written notice to a
12 taxpayer, require the taxpayer to prepare and file with the
13 Department on a form prescribed by the Department within not
14 less than 60 days after receipt of the notice an annual
15 information return for the tax year specified in the notice.
16 Such annual return to the Department shall include a statement
17 of gross receipts as shown by the taxpayer's last Federal
18 income tax return. If the total receipts of the business as
19 reported in the Federal income tax return do not agree with the
20 gross receipts reported to the Department of Revenue for the
21 same period, the taxpayer shall attach to his annual return a
22 schedule showing a reconciliation of the 2 amounts and the
23 reasons for the difference. The taxpayer's annual return to the
24 Department shall also disclose the cost of goods sold by the
25 taxpayer during the year covered by such return, opening and
26 closing inventories of such goods for such year, cost of goods
27 used from stock or taken from stock and given away by the
28 taxpayer during such year, pay roll information of the
29 taxpayer's business during such year and any additional
30 reasonable information which the Department deems would be
31 helpful in determining the accuracy of the monthly, quarterly
32 or annual returns filed by such taxpayer as hereinbefore
33 provided for in this Section.

34 If the annual information return required by this Section

1 is not filed when and as required, the taxpayer shall be liable
2 as follows:

3 (i) Until January 1, 1994, the taxpayer shall be liable
4 for a penalty equal to 1/6 of 1% of the tax due from such
5 taxpayer under this Act during the period to be covered by
6 the annual return for each month or fraction of a month
7 until such return is filed as required, the penalty to be
8 assessed and collected in the same manner as any other
9 penalty provided for in this Act.

10 (ii) On and after January 1, 1994, the taxpayer shall
11 be liable for a penalty as described in Section 3-4 of the
12 Uniform Penalty and Interest Act.

13 The chief executive officer, proprietor, owner or highest
14 ranking manager shall sign the annual return to certify the
15 accuracy of the information contained therein. Any person who
16 willfully signs the annual return containing false or
17 inaccurate information shall be guilty of perjury and punished
18 accordingly. The annual return form prescribed by the
19 Department shall include a warning that the person signing the
20 return may be liable for perjury.

21 The foregoing portion of this Section concerning the filing
22 of an annual information return shall not apply to a serviceman
23 who is not required to file an income tax return with the
24 United States Government.

25 As soon as possible after the first day of each month, upon
26 certification of the Department of Revenue, the Comptroller
27 shall order transferred and the Treasurer shall transfer from
28 the General Revenue Fund to the Motor Fuel Tax Fund an amount
29 equal to 1.7% of 80% of the net revenue realized under this Act
30 for the second preceding month. Beginning April 1, 2000, this
31 transfer is no longer required and shall not be made.

32 Net revenue realized for a month shall be the revenue
33 collected by the State pursuant to this Act, less the amount
34 paid out during that month as refunds to taxpayers for

1 overpayment of liability.

2 For greater simplicity of administration, it shall be
3 permissible for manufacturers, importers and wholesalers whose
4 products are sold by numerous servicemen in Illinois, and who
5 wish to do so, to assume the responsibility for accounting and
6 paying to the Department all tax accruing under this Act with
7 respect to such sales, if the servicemen who are affected do
8 not make written objection to the Department to this
9 arrangement.

10 (Source: P.A. 92-12, eff. 7-1-01; 92-208, eff. 8-2-01; 92-492,
11 eff. 1-1-02; 92-600, eff. 6-28-02; 92-651, eff. 7-11-02; 93-24,
12 eff. 6-20-03; revised 10-15-03.)

13 Section 12-20. The Retailers' Occupation Tax Act is amended
14 by changing Section 3 as follows:

15 (35 ILCS 120/3) (from Ch. 120, par. 442)

16 Sec. 3. Except as provided in this Section, on or before
17 the twentieth day of each calendar month, every person engaged
18 in the business of selling tangible personal property at retail
19 in this State during the preceding calendar month shall file a
20 return with the Department, stating:

21 1. The name of the seller;

22 2. His residence address and the address of his
23 principal place of business and the address of the
24 principal place of business (if that is a different
25 address) from which he engages in the business of selling
26 tangible personal property at retail in this State;

27 3. Total amount of receipts received by him during the
28 preceding calendar month or quarter, as the case may be,
29 from sales of tangible personal property, and from services
30 furnished, by him during such preceding calendar month or
31 quarter;

32 4. Total amount received by him during the preceding

1 calendar month or quarter on charge and time sales of
2 tangible personal property, and from services furnished,
3 by him prior to the month or quarter for which the return
4 is filed;

5 5. Deductions allowed by law;

6 6. Gross receipts which were received by him during the
7 preceding calendar month or quarter and upon the basis of
8 which the tax is imposed;

9 7. The amount of credit provided in Section 2d of this
10 Act;

11 8. The amount of tax due;

12 9. The signature of the taxpayer; and

13 10. Such other reasonable information as the
14 Department may require.

15 If a taxpayer fails to sign a return within 30 days after
16 the proper notice and demand for signature by the Department,
17 the return shall be considered valid and any amount shown to be
18 due on the return shall be deemed assessed.

19 Each return shall be accompanied by the statement of
20 prepaid tax issued pursuant to Section 2e for which credit is
21 claimed.

22 Prior to October 1, 2003 and on and after July 1, 2004, a
23 retailer may accept a Manufacturer's Purchase Credit
24 certification from a purchaser in satisfaction of Use Tax as
25 provided in Section 3-85 of the Use Tax Act if the purchaser
26 provides the appropriate documentation as required by Section
27 3-85 of the Use Tax Act. A Manufacturer's Purchase Credit
28 certification, accepted by a retailer prior to October 1, 2003
29 and on and after July 1, 2004, as provided in Section 3-85 of
30 the Use Tax Act, may be used by that retailer to satisfy
31 Retailers' Occupation Tax liability in the amount claimed in
32 the certification, not to exceed 6.25% of the receipts subject
33 to tax from a qualifying purchase. A Manufacturer's Purchase
34 Credit reported on any original or amended return filed under

1 this Act after October 20, 2003 for reporting periods prior to
2 July 1, 2004 shall be disallowed. Manufacturer's Purchase
3 Credit reported on annual returns due on or after January 1,
4 2005 will be disallowed for periods prior to July 1, 2004. No
5 Manufacturer's Purchase Credit may be used after September 30,
6 2003 through June 30, 2004 to satisfy any tax liability imposed
7 under this Act, including any audit liability.

8 The Department may require returns to be filed on a
9 quarterly basis. If so required, a return for each calendar
10 quarter shall be filed on or before the twentieth day of the
11 calendar month following the end of such calendar quarter. The
12 taxpayer shall also file a return with the Department for each
13 of the first two months of each calendar quarter, on or before
14 the twentieth day of the following calendar month, stating:

15 1. The name of the seller;

16 2. The address of the principal place of business from
17 which he engages in the business of selling tangible
18 personal property at retail in this State;

19 3. The total amount of taxable receipts received by him
20 during the preceding calendar month from sales of tangible
21 personal property by him during such preceding calendar
22 month, including receipts from charge and time sales, but
23 less all deductions allowed by law;

24 4. The amount of credit provided in Section 2d of this
25 Act;

26 5. The amount of tax due; and

27 6. Such other reasonable information as the Department
28 may require.

29 Beginning on October 1, 2003, any person who is not a
30 licensed distributor, importing distributor, or manufacturer,
31 as defined in the Liquor Control Act of 1934, but is engaged in
32 the business of selling, at retail, alcoholic liquor shall file
33 a statement with the Department of Revenue, in a format and at
34 a time prescribed by the Department, showing the total amount

1 paid for alcoholic liquor purchased during the preceding month
2 and such other information as is reasonably required by the
3 Department. The Department may adopt rules to require that this
4 statement be filed in an electronic or telephonic format. Such
5 rules may provide for exceptions from the filing requirements
6 of this paragraph. For the purposes of this paragraph, the term
7 "alcoholic liquor" shall have the meaning prescribed in the
8 Liquor Control Act of 1934.

9 Beginning on October 1, 2003, every distributor, importing
10 distributor, and manufacturer of alcoholic liquor as defined in
11 the Liquor Control Act of 1934, shall file a statement with the
12 Department of Revenue, no later than the 10th day of the month
13 for the preceding month during which transactions occurred, by
14 electronic means, showing the total amount of gross receipts
15 from the sale of alcoholic liquor sold or distributed during
16 the preceding month to purchasers; identifying the purchaser to
17 whom it was sold or distributed; the purchaser's tax
18 registration number; and such other information reasonably
19 required by the Department. A copy of the monthly statement
20 shall be sent to the retailer no later than the 10th day of the
21 month for the preceding month during which transactions
22 occurred.

23 If a total amount of less than \$1 is payable, refundable or
24 creditable, such amount shall be disregarded if it is less than
25 50 cents and shall be increased to \$1 if it is 50 cents or more.

26 Beginning October 1, 1993, a taxpayer who has an average
27 monthly tax liability of \$150,000 or more shall make all
28 payments required by rules of the Department by electronic
29 funds transfer. Beginning October 1, 1994, a taxpayer who has
30 an average monthly tax liability of \$100,000 or more shall make
31 all payments required by rules of the Department by electronic
32 funds transfer. Beginning October 1, 1995, a taxpayer who has
33 an average monthly tax liability of \$50,000 or more shall make
34 all payments required by rules of the Department by electronic

1 funds transfer. Beginning October 1, 2000, a taxpayer who has
2 an annual tax liability of \$200,000 or more shall make all
3 payments required by rules of the Department by electronic
4 funds transfer. The term "annual tax liability" shall be the
5 sum of the taxpayer's liabilities under this Act, and under all
6 other State and local occupation and use tax laws administered
7 by the Department, for the immediately preceding calendar year.
8 The term "average monthly tax liability" shall be the sum of
9 the taxpayer's liabilities under this Act, and under all other
10 State and local occupation and use tax laws administered by the
11 Department, for the immediately preceding calendar year
12 divided by 12. Beginning on October 1, 2002, a taxpayer who has
13 a tax liability in the amount set forth in subsection (b) of
14 Section 2505-210 of the Department of Revenue Law shall make
15 all payments required by rules of the Department by electronic
16 funds transfer.

17 Before August 1 of each year beginning in 1993, the
18 Department shall notify all taxpayers required to make payments
19 by electronic funds transfer. All taxpayers required to make
20 payments by electronic funds transfer shall make those payments
21 for a minimum of one year beginning on October 1.

22 Any taxpayer not required to make payments by electronic
23 funds transfer may make payments by electronic funds transfer
24 with the permission of the Department.

25 All taxpayers required to make payment by electronic funds
26 transfer and any taxpayers authorized to voluntarily make
27 payments by electronic funds transfer shall make those payments
28 in the manner authorized by the Department.

29 The Department shall adopt such rules as are necessary to
30 effectuate a program of electronic funds transfer and the
31 requirements of this Section.

32 Any amount which is required to be shown or reported on any
33 return or other document under this Act shall, if such amount
34 is not a whole-dollar amount, be increased to the nearest

1 whole-dollar amount in any case where the fractional part of a
2 dollar is 50 cents or more, and decreased to the nearest
3 whole-dollar amount where the fractional part of a dollar is
4 less than 50 cents.

5 If the retailer is otherwise required to file a monthly
6 return and if the retailer's average monthly tax liability to
7 the Department does not exceed \$200, the Department may
8 authorize his returns to be filed on a quarter annual basis,
9 with the return for January, February and March of a given year
10 being due by April 20 of such year; with the return for April,
11 May and June of a given year being due by July 20 of such year;
12 with the return for July, August and September of a given year
13 being due by October 20 of such year, and with the return for
14 October, November and December of a given year being due by
15 January 20 of the following year.

16 If the retailer is otherwise required to file a monthly or
17 quarterly return and if the retailer's average monthly tax
18 liability with the Department does not exceed \$50, the
19 Department may authorize his returns to be filed on an annual
20 basis, with the return for a given year being due by January 20
21 of the following year.

22 Such quarter annual and annual returns, as to form and
23 substance, shall be subject to the same requirements as monthly
24 returns.

25 Notwithstanding any other provision in this Act concerning
26 the time within which a retailer may file his return, in the
27 case of any retailer who ceases to engage in a kind of business
28 which makes him responsible for filing returns under this Act,
29 such retailer shall file a final return under this Act with the
30 Department not more than one month after discontinuing such
31 business.

32 Where the same person has more than one business registered
33 with the Department under separate registrations under this
34 Act, such person may not file each return that is due as a

1 single return covering all such registered businesses, but
2 shall file separate returns for each such registered business.

3 In addition, with respect to motor vehicles, watercraft,
4 aircraft, and trailers that are required to be registered with
5 an agency of this State, every retailer selling this kind of
6 tangible personal property shall file, with the Department,
7 upon a form to be prescribed and supplied by the Department, a
8 separate return for each such item of tangible personal
9 property which the retailer sells, except that if, in the same
10 transaction, (i) a retailer of aircraft, watercraft, motor
11 vehicles or trailers transfers more than one aircraft,
12 watercraft, motor vehicle or trailer to another aircraft,
13 watercraft, motor vehicle retailer or trailer retailer for the
14 purpose of resale or (ii) a retailer of aircraft, watercraft,
15 motor vehicles, or trailers transfers more than one aircraft,
16 watercraft, motor vehicle, or trailer to a purchaser for use as
17 a qualifying rolling stock as provided in Section 2-5 of this
18 Act, then that seller may report the transfer of all aircraft,
19 watercraft, motor vehicles or trailers involved in that
20 transaction to the Department on the same uniform
21 invoice-transaction reporting return form. For purposes of
22 this Section, "watercraft" means a Class 2, Class 3, or Class 4
23 watercraft as defined in Section 3-2 of the Boat Registration
24 and Safety Act, a personal watercraft, or any boat equipped
25 with an inboard motor.

26 Any retailer who sells only motor vehicles, watercraft,
27 aircraft, or trailers that are required to be registered with
28 an agency of this State, so that all retailers' occupation tax
29 liability is required to be reported, and is reported, on such
30 transaction reporting returns and who is not otherwise required
31 to file monthly or quarterly returns, need not file monthly or
32 quarterly returns. However, those retailers shall be required
33 to file returns on an annual basis.

34 The transaction reporting return, in the case of motor

1 vehicles or trailers that are required to be registered with an
2 agency of this State, shall be the same document as the Uniform
3 Invoice referred to in Section 5-402 of The Illinois Vehicle
4 Code and must show the name and address of the seller; the name
5 and address of the purchaser; the amount of the selling price
6 including the amount allowed by the retailer for traded-in
7 property, if any; the amount allowed by the retailer for the
8 traded-in tangible personal property, if any, to the extent to
9 which Section 1 of this Act allows an exemption for the value
10 of traded-in property; the balance payable after deducting such
11 trade-in allowance from the total selling price; the amount of
12 tax due from the retailer with respect to such transaction; the
13 amount of tax collected from the purchaser by the retailer on
14 such transaction (or satisfactory evidence that such tax is not
15 due in that particular instance, if that is claimed to be the
16 fact); the place and date of the sale; a sufficient
17 identification of the property sold; such other information as
18 is required in Section 5-402 of The Illinois Vehicle Code, and
19 such other information as the Department may reasonably
20 require.

21 The transaction reporting return in the case of watercraft
22 or aircraft must show the name and address of the seller; the
23 name and address of the purchaser; the amount of the selling
24 price including the amount allowed by the retailer for
25 traded-in property, if any; the amount allowed by the retailer
26 for the traded-in tangible personal property, if any, to the
27 extent to which Section 1 of this Act allows an exemption for
28 the value of traded-in property; the balance payable after
29 deducting such trade-in allowance from the total selling price;
30 the amount of tax due from the retailer with respect to such
31 transaction; the amount of tax collected from the purchaser by
32 the retailer on such transaction (or satisfactory evidence that
33 such tax is not due in that particular instance, if that is
34 claimed to be the fact); the place and date of the sale, a

1 sufficient identification of the property sold, and such other
2 information as the Department may reasonably require.

3 Such transaction reporting return shall be filed not later
4 than 20 days after the day of delivery of the item that is
5 being sold, but may be filed by the retailer at any time sooner
6 than that if he chooses to do so. The transaction reporting
7 return and tax remittance or proof of exemption from the
8 Illinois use tax may be transmitted to the Department by way of
9 the State agency with which, or State officer with whom the
10 tangible personal property must be titled or registered (if
11 titling or registration is required) if the Department and such
12 agency or State officer determine that this procedure will
13 expedite the processing of applications for title or
14 registration.

15 With each such transaction reporting return, the retailer
16 shall remit the proper amount of tax due (or shall submit
17 satisfactory evidence that the sale is not taxable if that is
18 the case), to the Department or its agents, whereupon the
19 Department shall issue, in the purchaser's name, a use tax
20 receipt (or a certificate of exemption if the Department is
21 satisfied that the particular sale is tax exempt) which such
22 purchaser may submit to the agency with which, or State officer
23 with whom, he must title or register the tangible personal
24 property that is involved (if titling or registration is
25 required) in support of such purchaser's application for an
26 Illinois certificate or other evidence of title or registration
27 to such tangible personal property.

28 No retailer's failure or refusal to remit tax under this
29 Act precludes a user, who has paid the proper tax to the
30 retailer, from obtaining his certificate of title or other
31 evidence of title or registration (if titling or registration
32 is required) upon satisfying the Department that such user has
33 paid the proper tax (if tax is due) to the retailer. The
34 Department shall adopt appropriate rules to carry out the

1 mandate of this paragraph.

2 If the user who would otherwise pay tax to the retailer
3 wants the transaction reporting return filed and the payment of
4 the tax or proof of exemption made to the Department before the
5 retailer is willing to take these actions and such user has not
6 paid the tax to the retailer, such user may certify to the fact
7 of such delay by the retailer and may (upon the Department
8 being satisfied of the truth of such certification) transmit
9 the information required by the transaction reporting return
10 and the remittance for tax or proof of exemption directly to
11 the Department and obtain his tax receipt or exemption
12 determination, in which event the transaction reporting return
13 and tax remittance (if a tax payment was required) shall be
14 credited by the Department to the proper retailer's account
15 with the Department, but without the 2.1% or 1.75% discount
16 provided for in this Section being allowed. When the user pays
17 the tax directly to the Department, he shall pay the tax in the
18 same amount and in the same form in which it would be remitted
19 if the tax had been remitted to the Department by the retailer.

20 Refunds made by the seller during the preceding return
21 period to purchasers, on account of tangible personal property
22 returned to the seller, shall be allowed as a deduction under
23 subdivision 5 of his monthly or quarterly return, as the case
24 may be, in case the seller had theretofore included the
25 receipts from the sale of such tangible personal property in a
26 return filed by him and had paid the tax imposed by this Act
27 with respect to such receipts.

28 Where the seller is a corporation, the return filed on
29 behalf of such corporation shall be signed by the president,
30 vice-president, secretary or treasurer or by the properly
31 accredited agent of such corporation.

32 Where the seller is a limited liability company, the return
33 filed on behalf of the limited liability company shall be
34 signed by a manager, member, or properly accredited agent of

1 the limited liability company.

2 Except as provided in this Section, the retailer filing the
3 return under this Section shall, at the time of filing such
4 return, pay to the Department the amount of tax imposed by this
5 Act less a discount of 2.1% prior to January 1, 1990 and 1.75%
6 on and after January 1, 1990, or \$5 per calendar year,
7 whichever is greater, which is allowed to reimburse the
8 retailer for the expenses incurred in keeping records,
9 preparing and filing returns, remitting the tax and supplying
10 data to the Department on request. Any prepayment made pursuant
11 to Section 2d of this Act shall be included in the amount on
12 which such 2.1% or 1.75% discount is computed. In the case of
13 retailers who report and pay the tax on a transaction by
14 transaction basis, as provided in this Section, such discount
15 shall be taken with each such tax remittance instead of when
16 such retailer files his periodic return.

17 Before October 1, 2000, if the taxpayer's average monthly
18 tax liability to the Department under this Act, the Use Tax
19 Act, the Service Occupation Tax Act, and the Service Use Tax
20 Act, excluding any liability for prepaid sales tax to be
21 remitted in accordance with Section 2d of this Act, was \$10,000
22 or more during the preceding 4 complete calendar quarters, he
23 shall file a return with the Department each month by the 20th
24 day of the month next following the month during which such tax
25 liability is incurred and shall make payments to the Department
26 on or before the 7th, 15th, 22nd and last day of the month
27 during which such liability is incurred. On and after October
28 1, 2000, if the taxpayer's average monthly tax liability to the
29 Department under this Act, the Use Tax Act, the Service
30 Occupation Tax Act, and the Service Use Tax Act, excluding any
31 liability for prepaid sales tax to be remitted in accordance
32 with Section 2d of this Act, was \$20,000 or more during the
33 preceding 4 complete calendar quarters, he shall file a return
34 with the Department each month by the 20th day of the month

1 next following the month during which such tax liability is
2 incurred and shall make payment to the Department on or before
3 the 7th, 15th, 22nd and last day of the month during which such
4 liability is incurred. If the month during which such tax
5 liability is incurred began prior to January 1, 1985, each
6 payment shall be in an amount equal to 1/4 of the taxpayer's
7 actual liability for the month or an amount set by the
8 Department not to exceed 1/4 of the average monthly liability
9 of the taxpayer to the Department for the preceding 4 complete
10 calendar quarters (excluding the month of highest liability and
11 the month of lowest liability in such 4 quarter period). If the
12 month during which such tax liability is incurred begins on or
13 after January 1, 1985 and prior to January 1, 1987, each
14 payment shall be in an amount equal to 22.5% of the taxpayer's
15 actual liability for the month or 27.5% of the taxpayer's
16 liability for the same calendar month of the preceding year. If
17 the month during which such tax liability is incurred begins on
18 or after January 1, 1987 and prior to January 1, 1988, each
19 payment shall be in an amount equal to 22.5% of the taxpayer's
20 actual liability for the month or 26.25% of the taxpayer's
21 liability for the same calendar month of the preceding year. If
22 the month during which such tax liability is incurred begins on
23 or after January 1, 1988, and prior to January 1, 1989, or
24 begins on or after January 1, 1996, each payment shall be in an
25 amount equal to 22.5% of the taxpayer's actual liability for
26 the month or 25% of the taxpayer's liability for the same
27 calendar month of the preceding year. If the month during which
28 such tax liability is incurred begins on or after January 1,
29 1989, and prior to January 1, 1996, each payment shall be in an
30 amount equal to 22.5% of the taxpayer's actual liability for
31 the month or 25% of the taxpayer's liability for the same
32 calendar month of the preceding year or 100% of the taxpayer's
33 actual liability for the quarter monthly reporting period. The
34 amount of such quarter monthly payments shall be credited

1 against the final tax liability of the taxpayer's return for
2 that month. Before October 1, 2000, once applicable, the
3 requirement of the making of quarter monthly payments to the
4 Department by taxpayers having an average monthly tax liability
5 of \$10,000 or more as determined in the manner provided above
6 shall continue until such taxpayer's average monthly liability
7 to the Department during the preceding 4 complete calendar
8 quarters (excluding the month of highest liability and the
9 month of lowest liability) is less than \$9,000, or until such
10 taxpayer's average monthly liability to the Department as
11 computed for each calendar quarter of the 4 preceding complete
12 calendar quarter period is less than \$10,000. However, if a
13 taxpayer can show the Department that a substantial change in
14 the taxpayer's business has occurred which causes the taxpayer
15 to anticipate that his average monthly tax liability for the
16 reasonably foreseeable future will fall below the \$10,000
17 threshold stated above, then such taxpayer may petition the
18 Department for a change in such taxpayer's reporting status. On
19 and after October 1, 2000, once applicable, the requirement of
20 the making of quarter monthly payments to the Department by
21 taxpayers having an average monthly tax liability of \$20,000 or
22 more as determined in the manner provided above shall continue
23 until such taxpayer's average monthly liability to the
24 Department during the preceding 4 complete calendar quarters
25 (excluding the month of highest liability and the month of
26 lowest liability) is less than \$19,000 or until such taxpayer's
27 average monthly liability to the Department as computed for
28 each calendar quarter of the 4 preceding complete calendar
29 quarter period is less than \$20,000. However, if a taxpayer can
30 show the Department that a substantial change in the taxpayer's
31 business has occurred which causes the taxpayer to anticipate
32 that his average monthly tax liability for the reasonably
33 foreseeable future will fall below the \$20,000 threshold stated
34 above, then such taxpayer may petition the Department for a

1 change in such taxpayer's reporting status. The Department
2 shall change such taxpayer's reporting status unless it finds
3 that such change is seasonal in nature and not likely to be
4 long term. If any such quarter monthly payment is not paid at
5 the time or in the amount required by this Section, then the
6 taxpayer shall be liable for penalties and interest on the
7 difference between the minimum amount due as a payment and the
8 amount of such quarter monthly payment actually and timely
9 paid, except insofar as the taxpayer has previously made
10 payments for that month to the Department in excess of the
11 minimum payments previously due as provided in this Section.
12 The Department shall make reasonable rules and regulations to
13 govern the quarter monthly payment amount and quarter monthly
14 payment dates for taxpayers who file on other than a calendar
15 monthly basis.

16 The provisions of this paragraph apply before October 1,
17 2001. Without regard to whether a taxpayer is required to make
18 quarter monthly payments as specified above, any taxpayer who
19 is required by Section 2d of this Act to collect and remit
20 prepaid taxes and has collected prepaid taxes which average in
21 excess of \$25,000 per month during the preceding 2 complete
22 calendar quarters, shall file a return with the Department as
23 required by Section 2f and shall make payments to the
24 Department on or before the 7th, 15th, 22nd and last day of the
25 month during which such liability is incurred. If the month
26 during which such tax liability is incurred began prior to the
27 effective date of this amendatory Act of 1985, each payment
28 shall be in an amount not less than 22.5% of the taxpayer's
29 actual liability under Section 2d. If the month during which
30 such tax liability is incurred begins on or after January 1,
31 1986, each payment shall be in an amount equal to 22.5% of the
32 taxpayer's actual liability for the month or 27.5% of the
33 taxpayer's liability for the same calendar month of the
34 preceding calendar year. If the month during which such tax

1 liability is incurred begins on or after January 1, 1987, each
2 payment shall be in an amount equal to 22.5% of the taxpayer's
3 actual liability for the month or 26.25% of the taxpayer's
4 liability for the same calendar month of the preceding year.
5 The amount of such quarter monthly payments shall be credited
6 against the final tax liability of the taxpayer's return for
7 that month filed under this Section or Section 2f, as the case
8 may be. Once applicable, the requirement of the making of
9 quarter monthly payments to the Department pursuant to this
10 paragraph shall continue until such taxpayer's average monthly
11 prepaid tax collections during the preceding 2 complete
12 calendar quarters is \$25,000 or less. If any such quarter
13 monthly payment is not paid at the time or in the amount
14 required, the taxpayer shall be liable for penalties and
15 interest on such difference, except insofar as the taxpayer has
16 previously made payments for that month in excess of the
17 minimum payments previously due.

18 The provisions of this paragraph apply on and after October
19 1, 2001. Without regard to whether a taxpayer is required to
20 make quarter monthly payments as specified above, any taxpayer
21 who is required by Section 2d of this Act to collect and remit
22 prepaid taxes and has collected prepaid taxes that average in
23 excess of \$20,000 per month during the preceding 4 complete
24 calendar quarters shall file a return with the Department as
25 required by Section 2f and shall make payments to the
26 Department on or before the 7th, 15th, 22nd and last day of the
27 month during which the liability is incurred. Each payment
28 shall be in an amount equal to 22.5% of the taxpayer's actual
29 liability for the month or 25% of the taxpayer's liability for
30 the same calendar month of the preceding year. The amount of
31 the quarter monthly payments shall be credited against the
32 final tax liability of the taxpayer's return for that month
33 filed under this Section or Section 2f, as the case may be.
34 Once applicable, the requirement of the making of quarter

1 monthly payments to the Department pursuant to this paragraph
2 shall continue until the taxpayer's average monthly prepaid tax
3 collections during the preceding 4 complete calendar quarters
4 (excluding the month of highest liability and the month of
5 lowest liability) is less than \$19,000 or until such taxpayer's
6 average monthly liability to the Department as computed for
7 each calendar quarter of the 4 preceding complete calendar
8 quarters is less than \$20,000. If any such quarter monthly
9 payment is not paid at the time or in the amount required, the
10 taxpayer shall be liable for penalties and interest on such
11 difference, except insofar as the taxpayer has previously made
12 payments for that month in excess of the minimum payments
13 previously due.

14 If any payment provided for in this Section exceeds the
15 taxpayer's liabilities under this Act, the Use Tax Act, the
16 Service Occupation Tax Act and the Service Use Tax Act, as
17 shown on an original monthly return, the Department shall, if
18 requested by the taxpayer, issue to the taxpayer a credit
19 memorandum no later than 30 days after the date of payment. The
20 credit evidenced by such credit memorandum may be assigned by
21 the taxpayer to a similar taxpayer under this Act, the Use Tax
22 Act, the Service Occupation Tax Act or the Service Use Tax Act,
23 in accordance with reasonable rules and regulations to be
24 prescribed by the Department. If no such request is made, the
25 taxpayer may credit such excess payment against tax liability
26 subsequently to be remitted to the Department under this Act,
27 the Use Tax Act, the Service Occupation Tax Act or the Service
28 Use Tax Act, in accordance with reasonable rules and
29 regulations prescribed by the Department. If the Department
30 subsequently determined that all or any part of the credit
31 taken was not actually due to the taxpayer, the taxpayer's 2.1%
32 and 1.75% vendor's discount shall be reduced by 2.1% or 1.75%
33 of the difference between the credit taken and that actually
34 due, and that taxpayer shall be liable for penalties and

1 interest on such difference.

2 If a retailer of motor fuel is entitled to a credit under
3 Section 2d of this Act which exceeds the taxpayer's liability
4 to the Department under this Act for the month which the
5 taxpayer is filing a return, the Department shall issue the
6 taxpayer a credit memorandum for the excess.

7 Beginning January 1, 1990, each month the Department shall
8 pay into the Local Government Tax Fund, a special fund in the
9 State treasury which is hereby created, the net revenue
10 realized for the preceding month from the 1% tax on sales of
11 food for human consumption which is to be consumed off the
12 premises where it is sold (other than alcoholic beverages, soft
13 drinks and food which has been prepared for immediate
14 consumption) and prescription and nonprescription medicines,
15 drugs, medical appliances and insulin, urine testing
16 materials, syringes and needles used by diabetics.

17 Beginning January 1, 1990, each month the Department shall
18 pay into the County and Mass Transit District Fund, a special
19 fund in the State treasury which is hereby created, 4% of the
20 net revenue realized for the preceding month from the 6.25%
21 general rate.

22 Beginning August 1, 2000, each month the Department shall
23 pay into the County and Mass Transit District Fund 20% of the
24 net revenue realized for the preceding month from the 1.25%
25 rate on the selling price of motor fuel and gasohol.

26 Beginning January 1, 1990, each month the Department shall
27 pay into the Local Government Tax Fund 16% of the net revenue
28 realized for the preceding month from the 6.25% general rate on
29 the selling price of tangible personal property.

30 Beginning August 1, 2000, each month the Department shall
31 pay into the Local Government Tax Fund 80% of the net revenue
32 realized for the preceding month from the 1.25% rate on the
33 selling price of motor fuel and gasohol.

34 Of the remainder of the moneys received by the Department

1 pursuant to this Act, (a) 1.75% thereof shall be paid into the
 2 Build Illinois Fund and (b) prior to July 1, 1989, 2.2% and on
 3 and after July 1, 1989, 3.8% thereof shall be paid into the
 4 Build Illinois Fund; provided, however, that if in any fiscal
 5 year the sum of (1) the aggregate of 2.2% or 3.8%, as the case
 6 may be, of the moneys received by the Department and required
 7 to be paid into the Build Illinois Fund pursuant to this Act,
 8 Section 9 of the Use Tax Act, Section 9 of the Service Use Tax
 9 Act, and Section 9 of the Service Occupation Tax Act, such Acts
 10 being hereinafter called the "Tax Acts" and such aggregate of
 11 2.2% or 3.8%, as the case may be, of moneys being hereinafter
 12 called the "Tax Act Amount", and (2) the amount transferred to
 13 the Build Illinois Fund from the State and Local Sales Tax
 14 Reform Fund shall be less than the Annual Specified Amount (as
 15 hereinafter defined), an amount equal to the difference shall
 16 be immediately paid into the Build Illinois Fund from other
 17 moneys received by the Department pursuant to the Tax Acts; the
 18 "Annual Specified Amount" means the amounts specified below for
 19 fiscal years 1986 through 1993:

20	Fiscal Year	Annual Specified Amount
21	1986	\$54,800,000
22	1987	\$76,650,000
23	1988	\$80,480,000
24	1989	\$88,510,000
25	1990	\$115,330,000
26	1991	\$145,470,000
27	1992	\$182,730,000
28	1993	\$206,520,000;

29 and means the Certified Annual Debt Service Requirement (as
 30 defined in Section 13 of the Build Illinois Bond Act) or the
 31 Tax Act Amount, whichever is greater, for fiscal year 1994 and
 32 each fiscal year thereafter; and further provided, that if on
 33 the last business day of any month the sum of (1) the Tax Act
 34 Amount required to be deposited into the Build Illinois Bond

1 Account in the Build Illinois Fund during such month and (2)
2 the amount transferred to the Build Illinois Fund from the
3 State and Local Sales Tax Reform Fund shall have been less than
4 1/12 of the Annual Specified Amount, an amount equal to the
5 difference shall be immediately paid into the Build Illinois
6 Fund from other moneys received by the Department pursuant to
7 the Tax Acts; and, further provided, that in no event shall the
8 payments required under the preceding proviso result in
9 aggregate payments into the Build Illinois Fund pursuant to
10 this clause (b) for any fiscal year in excess of the greater of
11 (i) the Tax Act Amount or (ii) the Annual Specified Amount for
12 such fiscal year. The amounts payable into the Build Illinois
13 Fund under clause (b) of the first sentence in this paragraph
14 shall be payable only until such time as the aggregate amount
15 on deposit under each trust indenture securing Bonds issued and
16 outstanding pursuant to the Build Illinois Bond Act is
17 sufficient, taking into account any future investment income,
18 to fully provide, in accordance with such indenture, for the
19 defeasance of or the payment of the principal of, premium, if
20 any, and interest on the Bonds secured by such indenture and on
21 any Bonds expected to be issued thereafter and all fees and
22 costs payable with respect thereto, all as certified by the
23 Director of the Bureau of the Budget (now Governor's Office of
24 Management and Budget). If on the last business day of any
25 month in which Bonds are outstanding pursuant to the Build
26 Illinois Bond Act, the aggregate of moneys deposited in the
27 Build Illinois Bond Account in the Build Illinois Fund in such
28 month shall be less than the amount required to be transferred
29 in such month from the Build Illinois Bond Account to the Build
30 Illinois Bond Retirement and Interest Fund pursuant to Section
31 13 of the Build Illinois Bond Act, an amount equal to such
32 deficiency shall be immediately paid from other moneys received
33 by the Department pursuant to the Tax Acts to the Build
34 Illinois Fund; provided, however, that any amounts paid to the

1 Build Illinois Fund in any fiscal year pursuant to this
 2 sentence shall be deemed to constitute payments pursuant to
 3 clause (b) of the first sentence of this paragraph and shall
 4 reduce the amount otherwise payable for such fiscal year
 5 pursuant to that clause (b). The moneys received by the
 6 Department pursuant to this Act and required to be deposited
 7 into the Build Illinois Fund are subject to the pledge, claim
 8 and charge set forth in Section 12 of the Build Illinois Bond
 9 Act.

10 Subject to payment of amounts into the Build Illinois Fund
 11 as provided in the preceding paragraph or in any amendment
 12 thereto hereafter enacted, the following specified monthly
 13 installment of the amount requested in the certificate of the
 14 Chairman of the Metropolitan Pier and Exposition Authority
 15 provided under Section 8.25f of the State Finance Act, but not
 16 in excess of sums designated as "Total Deposit", shall be
 17 deposited in the aggregate from collections under Section 9 of
 18 the Use Tax Act, Section 9 of the Service Use Tax Act, Section
 19 9 of the Service Occupation Tax Act, and Section 3 of the
 20 Retailers' Occupation Tax Act into the McCormick Place
 21 Expansion Project Fund in the specified fiscal years.

	Fiscal Year	Total Deposit
22		
23	1993	\$0
24	1994	53,000,000
25	1995	58,000,000
26	1996	61,000,000
27	1997	64,000,000
28	1998	68,000,000
29	1999	71,000,000
30	2000	75,000,000
31	2001	80,000,000
32	2002	93,000,000
33	2003	99,000,000

1	2004	103,000,000
2	2005	108,000,000
3	2006	113,000,000
4	2007	119,000,000
5	2008	126,000,000
6	2009	132,000,000
7	2010	139,000,000
8	2011	146,000,000
9	2012	153,000,000
10	2013	161,000,000
11	2014	170,000,000
12	2015	179,000,000
13	2016	189,000,000
14	2017	199,000,000
15	2018	210,000,000
16	2019	221,000,000
17	2020	233,000,000
18	2021	246,000,000
19	2022	260,000,000
20	2023 and	275,000,000

21 each fiscal year
22 thereafter that bonds
23 are outstanding under
24 Section 13.2 of the
25 Metropolitan Pier and
26 Exposition Authority Act,
27 but not after fiscal year 2042.

28 Beginning July 20, 1993 and in each month of each fiscal
29 year thereafter, one-eighth of the amount requested in the
30 certificate of the Chairman of the Metropolitan Pier and
31 Exposition Authority for that fiscal year, less the amount
32 deposited into the McCormick Place Expansion Project Fund by
33 the State Treasurer in the respective month under subsection
34 (g) of Section 13 of the Metropolitan Pier and Exposition

1 Authority Act, plus cumulative deficiencies in the deposits
2 required under this Section for previous months and years,
3 shall be deposited into the McCormick Place Expansion Project
4 Fund, until the full amount requested for the fiscal year, but
5 not in excess of the amount specified above as "Total Deposit",
6 has been deposited.

7 Subject to payment of amounts into the Build Illinois Fund
8 and the McCormick Place Expansion Project Fund pursuant to the
9 preceding paragraphs or in any amendments thereto hereafter
10 enacted, beginning July 1, 1993, the Department shall each
11 month pay into the Illinois Tax Increment Fund 0.27% of 80% of
12 the net revenue realized for the preceding month from the 6.25%
13 general rate on the selling price of tangible personal
14 property.

15 Subject to payment of amounts into the Build Illinois Fund
16 and the McCormick Place Expansion Project Fund pursuant to the
17 preceding paragraphs or in any amendments thereto hereafter
18 enacted, beginning with the receipt of the first report of
19 taxes paid by an eligible business and continuing for a 25-year
20 period, the Department shall each month pay into the Energy
21 Infrastructure Fund 80% of the net revenue realized from the
22 6.25% general rate on the selling price of Illinois-mined coal
23 that was sold to an eligible business. For purposes of this
24 paragraph, the term "eligible business" means a new electric
25 generating facility certified pursuant to Section 605-332 of
26 the Department of Commerce and Economic Opportunity ~~Community~~
27 ~~Affairs~~ Law of the Civil Administrative Code of Illinois.

28 Of the remainder of the moneys received by the Department
29 pursuant to this Act, 75% thereof shall be paid into the State
30 Treasury and 25% shall be reserved in a special account and
31 used only for the transfer to the Common School Fund as part of
32 the monthly transfer from the General Revenue Fund in
33 accordance with Section 8a of the State Finance Act.

34 The Department may, upon separate written notice to a

1 taxpayer, require the taxpayer to prepare and file with the
2 Department on a form prescribed by the Department within not
3 less than 60 days after receipt of the notice an annual
4 information return for the tax year specified in the notice.
5 Such annual return to the Department shall include a statement
6 of gross receipts as shown by the retailer's last Federal
7 income tax return. If the total receipts of the business as
8 reported in the Federal income tax return do not agree with the
9 gross receipts reported to the Department of Revenue for the
10 same period, the retailer shall attach to his annual return a
11 schedule showing a reconciliation of the 2 amounts and the
12 reasons for the difference. The retailer's annual return to the
13 Department shall also disclose the cost of goods sold by the
14 retailer during the year covered by such return, opening and
15 closing inventories of such goods for such year, costs of goods
16 used from stock or taken from stock and given away by the
17 retailer during such year, payroll information of the
18 retailer's business during such year and any additional
19 reasonable information which the Department deems would be
20 helpful in determining the accuracy of the monthly, quarterly
21 or annual returns filed by such retailer as provided for in
22 this Section.

23 If the annual information return required by this Section
24 is not filed when and as required, the taxpayer shall be liable
25 as follows:

26 (i) Until January 1, 1994, the taxpayer shall be liable
27 for a penalty equal to 1/6 of 1% of the tax due from such
28 taxpayer under this Act during the period to be covered by
29 the annual return for each month or fraction of a month
30 until such return is filed as required, the penalty to be
31 assessed and collected in the same manner as any other
32 penalty provided for in this Act.

33 (ii) On and after January 1, 1994, the taxpayer shall
34 be liable for a penalty as described in Section 3-4 of the

1 Uniform Penalty and Interest Act.

2 The chief executive officer, proprietor, owner or highest
3 ranking manager shall sign the annual return to certify the
4 accuracy of the information contained therein. Any person who
5 willfully signs the annual return containing false or
6 inaccurate information shall be guilty of perjury and punished
7 accordingly. The annual return form prescribed by the
8 Department shall include a warning that the person signing the
9 return may be liable for perjury.

10 The provisions of this Section concerning the filing of an
11 annual information return do not apply to a retailer who is not
12 required to file an income tax return with the United States
13 Government.

14 As soon as possible after the first day of each month, upon
15 certification of the Department of Revenue, the Comptroller
16 shall order transferred and the Treasurer shall transfer from
17 the General Revenue Fund to the Motor Fuel Tax Fund an amount
18 equal to 1.7% of 80% of the net revenue realized under this Act
19 for the second preceding month. Beginning April 1, 2000, this
20 transfer is no longer required and shall not be made.

21 Net revenue realized for a month shall be the revenue
22 collected by the State pursuant to this Act, less the amount
23 paid out during that month as refunds to taxpayers for
24 overpayment of liability.

25 For greater simplicity of administration, manufacturers,
26 importers and wholesalers whose products are sold at retail in
27 Illinois by numerous retailers, and who wish to do so, may
28 assume the responsibility for accounting and paying to the
29 Department all tax accruing under this Act with respect to such
30 sales, if the retailers who are affected do not make written
31 objection to the Department to this arrangement.

32 Any person who promotes, organizes, provides retail
33 selling space for concessionaires or other types of sellers at
34 the Illinois State Fair, DuQuoin State Fair, county fairs,

1 local fairs, art shows, flea markets and similar exhibitions or
2 events, including any transient merchant as defined by Section
3 2 of the Transient Merchant Act of 1987, is required to file a
4 report with the Department providing the name of the merchant's
5 business, the name of the person or persons engaged in
6 merchant's business, the permanent address and Illinois
7 Retailers Occupation Tax Registration Number of the merchant,
8 the dates and location of the event and other reasonable
9 information that the Department may require. The report must be
10 filed not later than the 20th day of the month next following
11 the month during which the event with retail sales was held.
12 Any person who fails to file a report required by this Section
13 commits a business offense and is subject to a fine not to
14 exceed \$250.

15 Any person engaged in the business of selling tangible
16 personal property at retail as a concessionaire or other type
17 of seller at the Illinois State Fair, county fairs, art shows,
18 flea markets and similar exhibitions or events, or any
19 transient merchants, as defined by Section 2 of the Transient
20 Merchant Act of 1987, may be required to make a daily report of
21 the amount of such sales to the Department and to make a daily
22 payment of the full amount of tax due. The Department shall
23 impose this requirement when it finds that there is a
24 significant risk of loss of revenue to the State at such an
25 exhibition or event. Such a finding shall be based on evidence
26 that a substantial number of concessionaires or other sellers
27 who are not residents of Illinois will be engaging in the
28 business of selling tangible personal property at retail at the
29 exhibition or event, or other evidence of a significant risk of
30 loss of revenue to the State. The Department shall notify
31 concessionaires and other sellers affected by the imposition of
32 this requirement. In the absence of notification by the
33 Department, the concessionaires and other sellers shall file
34 their returns as otherwise required in this Section.

1 (Source: P.A. 92-12, eff. 7-1-01; 92-16, eff. 6-28-01; 92-208,
2 eff. 8-2-01; 92-484, eff. 8-23-01; 92-492, eff. 1-1-02; 92-600,
3 eff. 6-28-02; 92-651, eff. 7-11-02; 93-22, eff. 6-20-03; 93-24,
4 eff. 6-20-03; revised 10-15-03.)

5 ARTICLE 15

6 Section 15-5. The Illinois Insurance Code is amended by
7 changing Section 416 as follows:

8 (215 ILCS 5/416)

9 Sec. 416. Industrial Commission Operations Fund Surcharge.

10 (a) As of the effective date of this amendatory Act of the
11 93rd General Assembly, every company licensed or authorized by
12 the Illinois Department of Insurance and insuring employers'
13 liabilities arising under the Workers' Compensation Act or the
14 Workers' Occupational Diseases Act shall remit to the Director
15 a surcharge based upon the annual direct written premium, as
16 reported under Section 136 of this Act, of the company in the
17 manner provided in this Section. Such proceeds shall be
18 deposited into the Industrial Commission Operations Fund as
19 established in the Workers' Compensation Act. If a company
20 survives or was formed by a merger, consolidation,
21 reorganization, or reincorporation, the direct written
22 premiums of all companies party to the merger, consolidation,
23 reorganization, or reincorporation shall, for purposes of
24 determining the amount of the fee imposed by this Section, be
25 regarded as those of the surviving or new company.

26 (b) (1) Except as provided in subsection (b) (2) of this
27 Section, beginning on July 1, 2004 and each year thereafter,
28 the Director shall charge an annual Industrial Commission
29 Operations Fund Surcharge from every company subject to
30 subsection (a) of this Section equal to 1.125% ~~1.5%~~ of its
31 direct written premium for insuring employers' liabilities

1 arising under the Workers' Compensation Act or Workers'
2 Occupational Diseases Act as reported in each company's annual
3 statement filed for the previous year as required by Section
4 136. The Industrial Commission Operations Fund Surcharge shall
5 be collected by companies subject to subsection (a) of this
6 Section as a separately stated surcharge on insured employers
7 at the rate of 1.125% ~~1.5%~~ of direct written premium. All sums
8 collected by the Department of Insurance under the provisions
9 of this Section shall be paid promptly after the receipt of the
10 same, accompanied by a detailed statement thereof, into the
11 Industrial Commission Operations Fund in the State treasury.

12 (b) (2) Prior to July 1, 2004, the Director shall charge and
13 collect the surcharge set forth in subparagraph (b) (1) of this
14 Section on or before September 1, 2003, December 1, 2003, March
15 1, 2004 and June 1, 2004. For purposes of this subsection
16 (b) (2), the company shall remit the amounts to the Director
17 based on estimated direct premium for each quarter beginning on
18 July 1, 2003, together with a sworn statement attesting to the
19 reasonableness of the estimate, and the estimated amount of
20 direct premium written forming the bases of the remittance.

21 (c) In addition to the authority specifically granted under
22 Article XXV of this Code, the Director shall have such
23 authority to adopt rules or establish forms as may be
24 reasonably necessary for purposes of enforcing this Section.
25 The Director shall also have authority to defer, waive, or
26 abate the surcharge or any penalties imposed by this Section if
27 in the Director's opinion the company's solvency and ability to
28 meet its insured obligations would be immediately threatened by
29 payment of the surcharge due.

30 (d) When a company fails to pay the full amount of any
31 annual Industrial Commission Operations Fund Surcharge of \$100
32 or more due under this Section, there shall be added to the
33 amount due as a penalty the greater of \$1,000 or an amount
34 equal to 5% of the deficiency for each month or part of a month

1 that the deficiency remains unpaid.

2 (e) The Department of Insurance may enforce the collection
3 of any delinquent payment, penalty, or portion thereof by legal
4 action or in any other manner by which the collection of debts
5 due the State of Illinois may be enforced under the laws of
6 this State.

7 (f) Whenever it appears to the satisfaction of the Director
8 that a company has paid pursuant to this Act an Industrial
9 Commission Operations Fund Surcharge in an amount in excess of
10 the amount legally collectable from the company, the Director
11 shall issue a credit memorandum for an amount equal to the
12 amount of such overpayment. A credit memorandum may be applied
13 for the 2-year period from the date of issuance, against the
14 payment of any amount due during that period under the
15 surcharge imposed by this Section or, subject to reasonable
16 rule of the Department of Insurance including requirement of
17 notification, may be assigned to any other company subject to
18 regulation under this Act. Any application of credit memoranda
19 after the period provided for in this Section is void.

20 (g) Annually, the Governor may direct a transfer of up to
21 2% of all moneys collected under this Section to the Insurance
22 Financial Regulation Fund.

23 (Source: P.A. 93-32, eff. 6-20-03.)

24 Section 15-10. The Workers' Compensation Act is amended by
25 changing Section 4d as follows:

26 (820 ILCS 305/4d)

27 Sec. 4d. Industrial Commission Operations Fund Fee.

28 (a) As of the effective date of this amendatory Act of the
29 93rd General Assembly, each employer that self-insures its
30 liabilities arising under this Act or Workers' Occupational
31 Diseases Act shall pay a fee measured by the annual actual
32 wages paid in this State of such an employer in the manner

1 provided in this Section. Such proceeds shall be deposited in
2 the Industrial Commission Operations Fund. If an employer
3 survives or was formed by a merger, consolidation,
4 reorganization, or reincorporation, the actual wages paid in
5 this State of all employers party to the merger, consolidation,
6 reorganization, or reincorporation shall, for purposes of
7 determining the amount of the fee imposed by this Section, be
8 regarded as those of the surviving or new employer.

9 (b) Beginning on the effective date of this amendatory Act
10 of the 93rd General Assembly and on July 1 of each year
11 thereafter prior to July 1, 2004, the Chairman shall charge and
12 collect an annual Industrial Commission Operations Fund Fee
13 from every employer subject to subsection (a) of this Section
14 equal to 0.045% of its annual actual wages paid in this State
15 as reported in each employer's annual self-insurance renewal
16 filed for the previous year as required by Section 4 of this
17 Act and Section 4 of the Workers' Occupational Diseases Act. No
18 fee shall be charged on or after July 1, 2004. All sums
19 collected by the Commission under the provisions of this
20 Section shall be paid promptly after the receipt of the same,
21 accompanied by a detailed statement thereof, into the
22 Industrial Commission Operations Fund.

23 (c) In addition to the authority specifically granted under
24 Section 16, the Chairman shall have such authority to adopt
25 rules or establish forms as may be reasonably necessary for
26 purposes of enforcing this Section. The Commission shall have
27 authority to defer, waive, or abate the fee or any penalties
28 imposed by this Section if in the Commission's opinion the
29 employer's solvency and ability to meet its obligations to pay
30 workers' compensation benefits would be immediately threatened
31 by payment of the fee due.

32 (d) When an employer fails to pay the full amount of any
33 annual Industrial Commission Operations Fund Fee of \$100 or
34 more due under this Section, there shall be added to the amount

1 due as a penalty the greater of \$1,000 or an amount equal to 5%
2 of the deficiency for each month or part of a month that the
3 deficiency remains unpaid.

4 (e) The Commission may enforce the collection of any
5 delinquent payment, penalty or portion thereof by legal action
6 or in any other manner by which the collection of debts due the
7 State of Illinois may be enforced under the laws of this State.

8 (f) Whenever it appears to the satisfaction of the Chairman
9 that an employer has paid pursuant to this Act an Industrial
10 Commission Operations Fund Fee in an amount in excess of the
11 amount legally collectable from the employer, the Chairman
12 shall issue a credit memorandum for an amount equal to the
13 amount of such overpayment. A credit memorandum may be applied
14 for the 2-year period from the date of issuance against the
15 payment of any amount due during that period under the fee
16 imposed by this Section or, subject to reasonable rule of the
17 Commission including requirement of notification, may be
18 assigned to any other employer subject to regulation under this
19 Act. Any application of credit memoranda after the period
20 provided for in this Section is void.

21 (Source: P.A. 93-32, eff. 6-20-03.)

22 ARTICLE 900

23 Section 905. The Statute on Statutes is amended by changing
24 Section 1.23 as follows:

25 (5 ILCS 70/1.23) (from Ch. 1, par. 1024)

26 Sec. 1.23. General Revenue Law of Illinois; economic
27 substance doctrine.

28 (a) The "General Revenue Law of Illinois", or any
29 equivalent expression, when used with reference to revenue,
30 shall be deemed to refer to the Property Tax Code and all
31 existing and future amendments thereto and modifications

1 thereof, and all rules now or hereafter adopted pursuant
2 thereto.

3 (b) Economic substance doctrine. In applying the
4 provisions of Chapter 35 (relating to revenue), the economic
5 substance doctrine shall apply.

6 The economic substance doctrine means the common law
7 doctrine under which tax benefits with respect to a transaction
8 or arrangement are not allowable if the transaction or
9 arrangement does not have economic substance or lacks a
10 business purpose (including a transaction or arrangement in
11 which an entity is disregarded as lacking economic substance).
12 For purposes of applying the economic substance doctrine, a
13 transaction or arrangement shall be considered as having
14 economic substance only if (i) the transaction changes in a
15 meaningful way (apart from its tax effects), the taxpayer's
16 economic position, and (ii) the taxpayer has a substantial
17 nontax purpose for entering into such transaction and the
18 transaction is a reasonable means of accomplishing such
19 purpose.

20 (Source: P.A. 88-670, eff. 12-2-94.)

21 Section 910. The Illinois Income Tax Act is amended by
22 changing Sections 203, 205, 207, 304, 305, 501, 502, 711, 712,
23 713, 804, 905, 911, 1001, 1002, 1005, and 1501 and by adding
24 Sections 709.5, 1007, 1008, 1405.5, and 1405.6 as follows:

25 (35 ILCS 5/203) (from Ch. 120, par. 2-203)

26 Sec. 203. Base income defined.

27 (a) Individuals.

28 (1) In general. In the case of an individual, base
29 income means an amount equal to the taxpayer's adjusted
30 gross income for the taxable year as modified by paragraph

31 (2).

32 (2) Modifications. The adjusted gross income referred

1 to in paragraph (1) shall be modified by adding thereto the
2 sum of the following amounts:

3 (A) An amount equal to all amounts paid or accrued
4 to the taxpayer as interest or dividends during the
5 taxable year to the extent excluded from gross income
6 in the computation of adjusted gross income, except
7 stock dividends of qualified public utilities
8 described in Section 305(e) of the Internal Revenue
9 Code;

10 (B) An amount equal to the amount of tax imposed by
11 this Act to the extent deducted from gross income in
12 the computation of adjusted gross income for the
13 taxable year;

14 (C) An amount equal to the amount received during
15 the taxable year as a recovery or refund of real
16 property taxes paid with respect to the taxpayer's
17 principal residence under the Revenue Act of 1939 and
18 for which a deduction was previously taken under
19 subparagraph (L) of this paragraph (2) prior to July 1,
20 1991, the retrospective application date of Article 4
21 of Public Act 87-17. In the case of multi-unit or
22 multi-use structures and farm dwellings, the taxes on
23 the taxpayer's principal residence shall be that
24 portion of the total taxes for the entire property
25 which is attributable to such principal residence;

26 (D) An amount equal to the amount of the capital
27 gain deduction allowable under the Internal Revenue
28 Code, to the extent deducted from gross income in the
29 computation of adjusted gross income;

30 (D-5) An amount, to the extent not included in
31 adjusted gross income, equal to the amount of money
32 withdrawn by the taxpayer in the taxable year from a
33 medical care savings account and the interest earned on
34 the account in the taxable year of a withdrawal

1 pursuant to subsection (b) of Section 20 of the Medical
2 Care Savings Account Act or subsection (b) of Section
3 20 of the Medical Care Savings Account Act of 2000;

4 (D-10) For taxable years ending after December 31,
5 1997, an amount equal to any eligible remediation costs
6 that the individual deducted in computing adjusted
7 gross income and for which the individual claims a
8 credit under subsection (l) of Section 201;

9 (D-15) For taxable years 2001 and thereafter, an
10 amount equal to the bonus depreciation deduction (30%
11 of the adjusted basis of the qualified property) taken
12 on the taxpayer's federal income tax return for the
13 taxable year under subsection (k) of Section 168 of the
14 Internal Revenue Code; and

15 (D-16) If the taxpayer reports a capital gain or
16 loss on the taxpayer's federal income tax return for
17 the taxable year based on a sale or transfer of
18 property for which the taxpayer was required in any
19 taxable year to make an addition modification under
20 subparagraph (D-15), then an amount equal to the
21 aggregate amount of the deductions taken in all taxable
22 years under subparagraph (Z) with respect to that
23 property.~~†~~

24 The taxpayer is required to make the addition
25 modification under this subparagraph only once with
26 respect to any one piece of property;~~† and~~

27 (D-17)(i) For taxable years ending on or after
28 December 31, 2004, an amount equal to the amount
29 otherwise allowed as a deduction in computing base
30 income for interest paid, accrued, or incurred,
31 directly or indirectly, to a foreign person who would
32 be a member of the same unitary business group but for
33 the fact that the foreign person's business activity
34 outside the United States is 80% or more of the foreign

1 person's total business activity. The addition
2 modification required by this subparagraph shall be
3 reduced to the extent that dividends were included in
4 base income for the same taxable year and received by
5 the taxpayer or by a member of the taxpayer's unitary
6 business group (including amounts included in gross
7 income under Sections 951 through 964 of the Internal
8 Revenue Code and amounts included in gross income under
9 Section 78 of the Internal Revenue Code) with respect
10 to the stock of the same person to whom the interest
11 was paid, accrued, or incurred. (ii) This subparagraph
12 does not apply to:

13
14 (1) an item of interest paid, accrued, or
15 incurred, directly or indirectly, to a foreign
16 person that is subject in a foreign country to a
17 tax on or measured by net income with respect to
18 such interest;

19 (2) an item of interest, to the extent that the
20 interest expense of the foreign person receiving
21 such interest during the same taxable year that is
22 directly or indirectly paid, accrued or incurred
23 to any person that is not a related party of either
24 the taxpayer or the foreign person exceeds that
25 foreign person's interest income (excluding the
26 interest receivable from the taxpayer) for the
27 taxable year, but only if the taxpayer establishes
28 by a preponderance of the evidence that the
29 transaction giving rise to the interest expense
30 between the taxpayer and the foreign person did not
31 have as a principal purpose the avoidance of any
32 portion of the tax that would otherwise be due;

33 (3) an item of interest paid, accrued, or
34 incurred pursuant to a contract that was binding

1 prior to the time the parties to the contract
2 became related parties, was not entered into as
3 part of the process by which the parties became
4 related parties, and has continually been enforced
5 according to its terms by each party;

6 (4) an item of interest if the taxpayer
7 establishes by clear and convincing evidence, as
8 determined by the Department, that the adjustments
9 are unreasonable; or if the taxpayer and the
10 Director agree in writing to the application or use
11 of an alternative method of apportionment under
12 section 304(f); or

13 (5) a taxpayer who is a small business person.

14 For purposes of this subparagraph, "related
15 parties" include persons disallowed a deduction for
16 losses by paragraphs (b), (c), and (f)(1) of Section
17 267 of the Internal Revenue Code by virtue of being a
18 related taxpayer, as well as a partner and its
19 partnership and each of the other partners in that
20 partnership;

21 (D-18) For taxable years ending on or after
22 December 31, 2004, an amount equal to the amount of
23 intangible expenses and costs otherwise allowed as a
24 deduction in computing base income, and that were paid,
25 accrued, or incurred, directly or indirectly, to a
26 foreign person who would be a member of the same
27 unitary business group but for the fact that the
28 foreign person's business activity outside the United
29 States is 80% or more of that person's total business
30 activity. The addition modification required by this
31 subparagraph shall be reduced to the extent that
32 dividends were included in base income for the same
33 taxable year and received by the taxpayer or by a
34 member of the taxpayer's unitary business group

1 (including amounts included in gross income under
2 Sections 951 through 964 of the Internal Revenue Code
3 and amounts included in gross income under Section 78
4 of the Internal Revenue Code) with respect to the stock
5 of the same person to whom the intangible expenses and
6 costs were directly or indirectly paid, incurred, or
7 accrued. The preceding sentence does not apply to the
8 extent that the same dividends caused a reduction to
9 the addition modification required under Section
10 203(a)(2)(D-17) of this Act. This subparagraph shall
11 not apply to any item of intangible expenses or costs
12 paid, accrued, or incurred, directly or indirectly,
13 from a transaction with a foreign person that is
14 subject in a foreign country to a tax on or measured by
15 net income with respect to such item. As used in this
16 subparagraph, the term "intangible expenses and costs"
17 includes (1) expenses, losses, and costs for, or
18 related to, the direct or indirect acquisition, use,
19 maintenance or management, ownership, sale, exchange,
20 or any other disposition of intangible property; (2)
21 losses incurred, directly or indirectly, from
22 factoring transactions or discounting transactions;
23 (3) royalty, patent, technical, and copyright fees;
24 (4) licensing fees; and (5) other similar expenses and
25 costs. For purposes of this subparagraph, "intangible
26 property" includes patents, patent applications, trade
27 names, trademarks, service marks, copyrights, mask
28 works, trade secrets, and similar types of intangible
29 assets. This subparagraph (D-18) shall not apply to a
30 taxpayer who is a small business person;

31 (D-20) ~~(D-15)~~ For taxable years beginning on or
32 after January 1, 2002, in the case of a distribution
33 from a qualified tuition program under Section 529 of
34 the Internal Revenue Code, other than (i) a

1 distribution from a College Savings Pool created under
2 Section 16.5 of the State Treasurer Act or (ii) a
3 distribution from the Illinois Prepaid Tuition Trust
4 Fund, an amount equal to the amount excluded from gross
5 income under Section 529(c) (3) (B) ~~+~~

6 and by deducting from the total so obtained the sum of the
7 following amounts:

8 (E) For taxable years ending before December 31,
9 2001, any amount included in such total in respect of
10 any compensation (including but not limited to any
11 compensation paid or accrued to a serviceman while a
12 prisoner of war or missing in action) paid to a
13 resident by reason of being on active duty in the Armed
14 Forces of the United States and in respect of any
15 compensation paid or accrued to a resident who as a
16 governmental employee was a prisoner of war or missing
17 in action, and in respect of any compensation paid to a
18 resident in 1971 or thereafter for annual training
19 performed pursuant to Sections 502 and 503, Title 32,
20 United States Code as a member of the Illinois National
21 Guard. For taxable years ending on or after December
22 31, 2001, any amount included in such total in respect
23 of any compensation (including but not limited to any
24 compensation paid or accrued to a serviceman while a
25 prisoner of war or missing in action) paid to a
26 resident by reason of being a member of any component
27 of the Armed Forces of the United States and in respect
28 of any compensation paid or accrued to a resident who
29 as a governmental employee was a prisoner of war or
30 missing in action, and in respect of any compensation
31 paid to a resident in 2001 or thereafter by reason of
32 being a member of the Illinois National Guard. The
33 provisions of this amendatory Act of the 92nd General
34 Assembly are exempt from the provisions of Section 250;

1 (F) An amount equal to all amounts included in such
2 total pursuant to the provisions of Sections 402(a),
3 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the
4 Internal Revenue Code, or included in such total as
5 distributions under the provisions of any retirement
6 or disability plan for employees of any governmental
7 agency or unit, or retirement payments to retired
8 partners, which payments are excluded in computing net
9 earnings from self employment by Section 1402 of the
10 Internal Revenue Code and regulations adopted pursuant
11 thereto;

12 (G) The valuation limitation amount;

13 (H) An amount equal to the amount of any tax
14 imposed by this Act which was refunded to the taxpayer
15 and included in such total for the taxable year;

16 (I) An amount equal to all amounts included in such
17 total pursuant to the provisions of Section 111 of the
18 Internal Revenue Code as a recovery of items previously
19 deducted from adjusted gross income in the computation
20 of taxable income;

21 (J) An amount equal to those dividends included in
22 such total which were paid by a corporation which
23 conducts business operations in an Enterprise Zone or
24 zones created under the Illinois Enterprise Zone Act,
25 and conducts substantially all of its operations in an
26 Enterprise Zone or zones;

27 (K) An amount equal to those dividends included in
28 such total that were paid by a corporation that
29 conducts business operations in a federally designated
30 Foreign Trade Zone or Sub-Zone and that is designated a
31 High Impact Business located in Illinois; provided
32 that dividends eligible for the deduction provided in
33 subparagraph (J) of paragraph (2) of this subsection
34 shall not be eligible for the deduction provided under

1 this subparagraph (K);

2 (L) For taxable years ending after December 31,
3 1983, an amount equal to all social security benefits
4 and railroad retirement benefits included in such
5 total pursuant to Sections 72(r) and 86 of the Internal
6 Revenue Code;

7 (M) With the exception of any amounts subtracted
8 under subparagraph (N), an amount equal to the sum of
9 all amounts disallowed as deductions by (i) Sections
10 171(a) (2), and 265(2) of the Internal Revenue Code of
11 1954, as now or hereafter amended, and all amounts of
12 expenses allocable to interest and disallowed as
13 deductions by Section 265(1) of the Internal Revenue
14 Code of 1954, as now or hereafter amended; and (ii) for
15 taxable years ending on or after August 13, 1999,
16 Sections 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of
17 the Internal Revenue Code; the provisions of this
18 subparagraph are exempt from the provisions of Section
19 250;

20 (N) An amount equal to all amounts included in such
21 total which are exempt from taxation by this State
22 either by reason of its statutes or Constitution or by
23 reason of the Constitution, treaties or statutes of the
24 United States; provided that, in the case of any
25 statute of this State or the United States, any treaty
26 of the United States, the Illinois Constitution, or the
27 United States Constitution that exempts income derived
28 from bonds or other obligations from the tax imposed
29 under this Act, the amount exempted shall be the income
30 ~~interest~~ net of bond premium amortization, interest
31 expense incurred on indebtedness to carry the bond or
32 other obligation, expenses incurred in producing the
33 income to be deducted and any other expenses deducted
34 on the federal return that would not have been allowed

1 under Internal Revenue Code Section 265 if the interest
2 were exempt from federal tax. The amount of expenses to
3 be taken into account under this provision cannot
4 exceed the amount of income which is exempted. The
5 changes made to this subparagraph (N) by this
6 amendatory Act of the 93rd General Assembly shall not
7 apply to a small business person;

8 (O) An amount equal to any contribution made to a
9 job training project established pursuant to the Tax
10 Increment Allocation Redevelopment Act;

11 (P) An amount equal to the amount of the deduction
12 used to compute the federal income tax credit for
13 restoration of substantial amounts held under claim of
14 right for the taxable year pursuant to Section 1341 of
15 the Internal Revenue Code of 1986;

16 (Q) An amount equal to any amounts included in such
17 total, received by the taxpayer as an acceleration in
18 the payment of life, endowment or annuity benefits in
19 advance of the time they would otherwise be payable as
20 an indemnity for a terminal illness;

21 (R) An amount equal to the amount of any federal or
22 State bonus paid to veterans of the Persian Gulf War;

23 (S) An amount, to the extent included in adjusted
24 gross income, equal to the amount of a contribution
25 made in the taxable year on behalf of the taxpayer to a
26 medical care savings account established under the
27 Medical Care Savings Account Act or the Medical Care
28 Savings Account Act of 2000 to the extent the
29 contribution is accepted by the account administrator
30 as provided in that Act;

31 (T) An amount, to the extent included in adjusted
32 gross income, equal to the amount of interest earned in
33 the taxable year on a medical care savings account
34 established under the Medical Care Savings Account Act

1 or the Medical Care Savings Account Act of 2000 on
2 behalf of the taxpayer, other than interest added
3 pursuant to item (D-5) of this paragraph (2);

4 (U) For one taxable year beginning on or after
5 January 1, 1994, an amount equal to the total amount of
6 tax imposed and paid under subsections (a) and (b) of
7 Section 201 of this Act on grant amounts received by
8 the taxpayer under the Nursing Home Grant Assistance
9 Act during the taxpayer's taxable years 1992 and 1993;

10 (V) Beginning with tax years ending on or after
11 December 31, 1995 and ending with tax years ending on
12 or before December 31, 2004, an amount equal to the
13 amount paid by a taxpayer who is a self-employed
14 taxpayer, a partner of a partnership, or a shareholder
15 in a Subchapter S corporation for health insurance or
16 long-term care insurance for that taxpayer or that
17 taxpayer's spouse or dependents, to the extent that the
18 amount paid for that health insurance or long-term care
19 insurance may be deducted under Section 213 of the
20 Internal Revenue Code of 1986, has not been deducted on
21 the federal income tax return of the taxpayer, and does
22 not exceed the taxable income attributable to that
23 taxpayer's income, self-employment income, or
24 Subchapter S corporation income; except that no
25 deduction shall be allowed under this item (V) if the
26 taxpayer is eligible to participate in any health
27 insurance or long-term care insurance plan of an
28 employer of the taxpayer or the taxpayer's spouse. The
29 amount of the health insurance and long-term care
30 insurance subtracted under this item (V) shall be
31 determined by multiplying total health insurance and
32 long-term care insurance premiums paid by the taxpayer
33 times a number that represents the fractional
34 percentage of eligible medical expenses under Section

1 213 of the Internal Revenue Code of 1986 not actually
2 deducted on the taxpayer's federal income tax return;

3 (W) For taxable years beginning on or after January
4 1, 1998, all amounts included in the taxpayer's federal
5 gross income in the taxable year from amounts converted
6 from a regular IRA to a Roth IRA. This paragraph is
7 exempt from the provisions of Section 250;

8 (X) For taxable year 1999 and thereafter, an amount
9 equal to the amount of any (i) distributions, to the
10 extent includible in gross income for federal income
11 tax purposes, made to the taxpayer because of his or
12 her status as a victim of persecution for racial or
13 religious reasons by Nazi Germany or any other Axis
14 regime or as an heir of the victim and (ii) items of
15 income, to the extent includible in gross income for
16 federal income tax purposes, attributable to, derived
17 from or in any way related to assets stolen from,
18 hidden from, or otherwise lost to a victim of
19 persecution for racial or religious reasons by Nazi
20 Germany or any other Axis regime immediately prior to,
21 during, and immediately after World War II, including,
22 but not limited to, interest on the proceeds receivable
23 as insurance under policies issued to a victim of
24 persecution for racial or religious reasons by Nazi
25 Germany or any other Axis regime by European insurance
26 companies immediately prior to and during World War II;
27 provided, however, this subtraction from federal
28 adjusted gross income does not apply to assets acquired
29 with such assets or with the proceeds from the sale of
30 such assets; provided, further, this paragraph shall
31 only apply to a taxpayer who was the first recipient of
32 such assets after their recovery and who is a victim of
33 persecution for racial or religious reasons by Nazi
34 Germany or any other Axis regime or as an heir of the

1 victim. The amount of and the eligibility for any
2 public assistance, benefit, or similar entitlement is
3 not affected by the inclusion of items (i) and (ii) of
4 this paragraph in gross income for federal income tax
5 purposes. This paragraph is exempt from the provisions
6 of Section 250;

7 (Y) For taxable years beginning on or after January
8 1, 2002, moneys contributed in the taxable year to a
9 College Savings Pool account under Section 16.5 of the
10 State Treasurer Act, except that amounts excluded from
11 gross income under Section 529(c)(3) (C)(i) of the
12 Internal Revenue Code shall not be considered moneys
13 contributed under this subparagraph (Y). This
14 subparagraph (Y) is exempt from the provisions of
15 Section 250;

16 (Z) For taxable years 2001 and thereafter, for the
17 taxable year in which the bonus depreciation deduction
18 (30% of the adjusted basis of the qualified property)
19 is taken on the taxpayer's federal income tax return
20 under subsection (k) of Section 168 of the Internal
21 Revenue Code and for each applicable taxable year
22 thereafter, an amount equal to "x", where:

23 (1) "y" equals the amount of the depreciation
24 deduction taken for the taxable year on the
25 taxpayer's federal income tax return on property
26 for which the bonus depreciation deduction (30% of
27 the adjusted basis of the qualified property) was
28 taken in any year under subsection (k) of Section
29 168 of the Internal Revenue Code, but not including
30 the bonus depreciation deduction; and

31 (2) "x" equals "y" multiplied by 30 and then
32 divided by 70 (or "y" multiplied by 0.429).

33 The aggregate amount deducted under this
34 subparagraph in all taxable years for any one piece of

1 property may not exceed the amount of the bonus
2 depreciation deduction (30% of the adjusted basis of
3 the qualified property) taken on that property on the
4 taxpayer's federal income tax return under subsection
5 (k) of Section 168 of the Internal Revenue Code; ~~and~~

6 (AA) If the taxpayer reports a capital gain or loss
7 on the taxpayer's federal income tax return for the
8 taxable year based on a sale or transfer of property
9 for which the taxpayer was required in any taxable year
10 to make an addition modification under subparagraph
11 (D-15), then an amount equal to that addition
12 modification.

13 The taxpayer is allowed to take the deduction under
14 this subparagraph only once with respect to any one
15 piece of property; ~~and~~

16 (BB) ~~(Z)~~ Any amount included in adjusted gross
17 income, other than salary, received by a driver in a
18 ridesharing arrangement using a motor vehicle; ~~;~~

19 (CC) The amount of (i) any interest income (net of
20 the deductions allocable thereto) taken into account
21 for the taxable year with respect to a transaction with
22 a taxpayer that is required to make an addition
23 modification with respect to such transaction under
24 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
25 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
26 the amount of that addition modification, and (ii) any
27 income from intangible property (net of the deductions
28 allocable thereto) taken into account for the taxable
29 year with respect to a transaction with a taxpayer that
30 is required to make an addition modification with
31 respect to such transaction under Section
32 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
33 203(d)(2)(D-8), but not to exceed the amount of that
34 addition modification;

1 (DD) An amount equal to the interest income taken
2 into account for the taxable year (net of the
3 deductions allocable thereto) with respect to
4 transactions with a foreign person who would be a
5 member of the taxpayer's unitary business group but for
6 the fact that the foreign person's business activity
7 outside the United States is 80% or more of that
8 person's total business activity, but not to exceed the
9 addition modification required to be made for the same
10 taxable year under Section 203(a)(2)(D-17) for
11 interest paid, accrued, or incurred, directly or
12 indirectly, to the same foreign person; and

13 (EE) An amount equal to the income from intangible
14 property taken into account for the taxable year (net
15 of the deductions allocable thereto) with respect to
16 transactions with a foreign person who would be a
17 member of the taxpayer's unitary business group but for
18 the fact that the foreign person's business activity
19 outside the United States is 80% or more of that
20 person's total business activity, but not to exceed the
21 addition modification required to be made for the same
22 taxable year under Section 203(a)(2)(D-18) for
23 intangible expenses and costs paid, accrued, or
24 incurred, directly or indirectly, to the same foreign
25 person.

26 (b) Corporations.

27 (1) In general. In the case of a corporation, base
28 income means an amount equal to the taxpayer's taxable
29 income for the taxable year as modified by paragraph (2).

30 (2) Modifications. The taxable income referred to in
31 paragraph (1) shall be modified by adding thereto the sum
32 of the following amounts:

33 (A) An amount equal to all amounts paid or accrued

1 to the taxpayer as interest and all distributions
2 received from regulated investment companies during
3 the taxable year to the extent excluded from gross
4 income in the computation of taxable income;

5 (B) An amount equal to the amount of tax imposed by
6 this Act to the extent deducted from gross income in
7 the computation of taxable income for the taxable year;

8 (C) In the case of a regulated investment company,
9 an amount equal to the excess of (i) the net long-term
10 capital gain for the taxable year, over (ii) the amount
11 of the capital gain dividends designated as such in
12 accordance with Section 852(b)(3)(C) of the Internal
13 Revenue Code and any amount designated under Section
14 852(b)(3)(D) of the Internal Revenue Code,
15 attributable to the taxable year (this amendatory Act
16 of 1995 (Public Act 89-89) is declarative of existing
17 law and is not a new enactment);

18 (D) The amount of any net operating loss deduction
19 taken in arriving at taxable income, other than a net
20 operating loss carried forward from a taxable year
21 ending prior to December 31, 1986;

22 (E) For taxable years in which a net operating loss
23 carryback or carryforward from a taxable year ending
24 prior to December 31, 1986 is an element of taxable
25 income under paragraph (1) of subsection (e) or
26 subparagraph (E) of paragraph (2) of subsection (e),
27 the amount by which addition modifications other than
28 those provided by this subparagraph (E) exceeded
29 subtraction modifications in such earlier taxable
30 year, with the following limitations applied in the
31 order that they are listed:

32 (i) the addition modification relating to the
33 net operating loss carried back or forward to the
34 taxable year from any taxable year ending prior to

1 December 31, 1986 shall be reduced by the amount of
2 addition modification under this subparagraph (E)
3 which related to that net operating loss and which
4 was taken into account in calculating the base
5 income of an earlier taxable year, and

6 (ii) the addition modification relating to the
7 net operating loss carried back or forward to the
8 taxable year from any taxable year ending prior to
9 December 31, 1986 shall not exceed the amount of
10 such carryback or carryforward;

11 For taxable years in which there is a net operating
12 loss carryback or carryforward from more than one other
13 taxable year ending prior to December 31, 1986, the
14 addition modification provided in this subparagraph
15 (E) shall be the sum of the amounts computed
16 independently under the preceding provisions of this
17 subparagraph (E) for each such taxable year;

18 (E-5) For taxable years ending after December 31,
19 1997, an amount equal to any eligible remediation costs
20 that the corporation deducted in computing adjusted
21 gross income and for which the corporation claims a
22 credit under subsection (l) of Section 201;

23 (E-10) For taxable years 2001 and thereafter, an
24 amount equal to the bonus depreciation deduction (30%
25 of the adjusted basis of the qualified property) taken
26 on the taxpayer's federal income tax return for the
27 taxable year under subsection (k) of Section 168 of the
28 Internal Revenue Code; ~~and~~

29 (E-11) If the taxpayer reports a capital gain or
30 loss on the taxpayer's federal income tax return for
31 the taxable year based on a sale or transfer of
32 property for which the taxpayer was required in any
33 taxable year to make an addition modification under
34 subparagraph (E-10), then an amount equal to the

1 aggregate amount of the deductions taken in all taxable
2 years under subparagraph (T) with respect to that
3 property.~~†~~

4 The taxpayer is required to make the addition
5 modification under this subparagraph only once with
6 respect to any one piece of property;

7 (E-12) For taxable years ending on or after
8 December 31, 2004, to the extent not otherwise included
9 in base income, an amount equal to the amount of
10 dividends received, directly or indirectly, (including
11 amounts included in gross income pursuant to Sections
12 951 through 964 of the Internal Revenue Code and
13 amounts included in gross income under Section 78 of
14 the Internal Revenue Code) with respect to the stock of
15 a passive income affiliate, as defined in Section
16 1501(a)(29) of this Act. This subparagraph (E-12)
17 shall not apply to a small business person;

18 (E-13)(i) For taxable years ending on or after
19 December 31, 2004, an amount equal to the amount
20 otherwise allowed as a deduction in computing base
21 income for interest paid, accrued, or incurred,
22 directly or indirectly, to a foreign person who would
23 be a member of the same unitary business group but for
24 the fact that the foreign person's business activity
25 outside the United States is 80% or more of the foreign
26 person's total business activity. The addition
27 modification required by this subparagraph shall be
28 reduced to the extent that dividends were included in
29 base income for the same taxable year and received by
30 the taxpayer or by a member of the taxpayer's unitary
31 business group (including amounts included in gross
32 income pursuant to Sections 951 through 964 of the
33 Internal Revenue Code and amounts included in gross
34 income under Section 78 of the Internal Revenue Code)

1 with respect to the stock of the same person to whom
2 the interest was paid, accrued, or incurred. (ii) This
3 subparagraph does not apply to:

4 (1) an item of interest paid, accrued, or
5 incurred, directly or indirectly, to a foreign
6 person that is subject in a foreign country to
7 a tax on or measured by net income with respect
8 to such interest;

9 (2) an item of interest, to the extent that the
10 interest expense of the foreign person
11 receiving such interest during the same
12 taxable year that is directly or indirectly
13 paid, accrued or incurred to any person that is
14 not a related party of either the taxpayer or
15 the foreign person exceeds that foreign
16 person's interest income (excluding the
17 interest receivable from the taxpayer) for the
18 taxable year, but only if the taxpayer
19 establishes by a preponderance of the evidence
20 that the transaction giving rise to the
21 interest expense between the taxpayer and the
22 foreign person did not have as a principal
23 purpose the avoidance of any portion of the tax
24 that would otherwise be due.

25 (3) an item of interest paid, accrued, or
26 incurred pursuant to a contract that was
27 binding prior to the time the parties to the
28 contract became related parties, was not
29 entered into as part of the process by which
30 the parties became related parties, and has
31 continually been enforced according to its
32 terms by each party;

33 (4) an item of interest if the taxpayer
34 establishes by clear and convincing evidence,

1 as determined by the Department, that the
2 adjustments are unreasonable; or if the
3 taxpayer and the Director agree in writing to
4 the application or use of an alternative method
5 of apportionment under section 304(f), or
6 (5) a taxpayer who is a small business person.

7 For purposes of this subparagraph, "related
8 parties" include persons disallowed a deduction for
9 losses by paragraphs (b), (c), and (f)(1) of Section
10 267 of the Internal Revenue Code by virtue of being a
11 related taxpayer, as well as a partner and its
12 partnership and each of the other partners in that
13 partnership; and

14 (E-14) For taxable years ending on or after
15 December 31, 2004, an amount equal to the amount of
16 intangible expenses and costs otherwise allowed as a
17 deduction in computing base income, and that were paid,
18 accrued, or incurred, directly or indirectly, to a
19 foreign person who would be a member of the same
20 unitary business group but for the fact that the
21 foreign person's business activity outside the United
22 States is 80% or more of that person's total business
23 activity. The addition modification required by this
24 subparagraph shall be reduced to the extent that
25 dividends were included in base income for the same
26 taxable year and received by the taxpayer or by a
27 member of the taxpayer's unitary business group
28 (including amounts included in gross income pursuant
29 to Sections 951 through 964 of the Internal Revenue
30 Code and amounts included in gross income under Section
31 78 of the Internal Revenue Code) with respect to the
32 stock of the same person to whom the intangible
33 expenses and costs were directly or indirectly paid,
34 incurred, or accrued. The preceding sentence shall not

1 apply to the extent that the same dividends caused a
2 reduction to the addition modification required under
3 Section 203(b) (2) (E-13) of this Act. This subparagraph
4 shall not apply to any item of intangible expenses or
5 costs paid, accrued, or incurred, directly or
6 indirectly, from a transaction with a foreign person
7 who is subject in a foreign country to a tax on or
8 measured by net income with respect to such item. As
9 used in this subparagraph, the term "intangible
10 expenses and costs" includes (1) expenses, losses, and
11 costs for, or related to, the direct or indirect
12 acquisition, use, maintenance or management,
13 ownership, sale, exchange, or any other disposition of
14 intangible property; (2) losses incurred, directly or
15 indirectly, from factoring transactions or discounting
16 transactions; (3) royalty, patent, technical, and
17 copyright fees; (4) licensing fees; and (5) other
18 similar expenses and costs. For purposes of this
19 subparagraph, "intangible property" includes patents,
20 patent applications, trade names, trademarks, service
21 marks, copyrights, mask works, trade secrets, and
22 similar types of intangible assets. This subparagraph
23 (E-14) shall not apply to a taxpayer who is a small
24 business person.

25 and by deducting from the total so obtained the sum of the
26 following amounts:

27 (F) An amount equal to the amount of any tax
28 imposed by this Act which was refunded to the taxpayer
29 and included in such total for the taxable year;

30 (G) An amount equal to any amount included in such
31 total under Section 78 of the Internal Revenue Code;

32 (H) In the case of a regulated investment company,
33 an amount equal to the amount of exempt interest
34 dividends as defined in subsection (b) (5) of Section

1 852 of the Internal Revenue Code, paid to shareholders
2 for the taxable year;

3 (I) With the exception of any amounts subtracted
4 under subparagraph (J), an amount equal to the sum of
5 all amounts disallowed as deductions by (i) Sections
6 171(a) (2), and 265(a)(2) and amounts disallowed as
7 interest expense by Section 291(a)(3) of the Internal
8 Revenue Code, as now or hereafter amended, and all
9 amounts of expenses allocable to interest and
10 disallowed as deductions by Section 265(a)(1) of the
11 Internal Revenue Code, as now or hereafter amended; and
12 (ii) for taxable years ending on or after August 13,
13 1999, Sections 171(a)(2), 265, 280C, 291(a)(3), and
14 832(b)(5)(B)(i) of the Internal Revenue Code; the
15 provisions of this subparagraph are exempt from the
16 provisions of Section 250;

17 (J) An amount equal to all amounts included in such
18 total which are exempt from taxation by this State
19 either by reason of its statutes or Constitution or by
20 reason of the Constitution, treaties or statutes of the
21 United States; provided that, in the case of any
22 statute of this State or the United States, any treaty
23 of the United States, the Illinois Constitution, or the
24 United States Constitution that exempts income derived
25 from bonds or other obligations from the tax imposed
26 under this Act, the amount exempted shall be the income
27 ~~interest~~ net of bond premium amortization, interest
28 expense incurred on indebtedness to carry the bond or
29 other obligation, expenses incurred in producing the
30 income to be deducted and any other expenses deducted
31 on the federal return that would not have been allowed
32 under Internal Revenue Code Section 265 if the interest
33 were exempt from federal tax. The amount of expenses to
34 be taken into account under this provision cannot

1 exceed the amount of income which is exempted. The
2 changes made to this subparagraph (J) by this
3 amendatory Act of the 93rd General Assembly shall not
4 apply to a small business person;

5 (K) An amount equal to those dividends included in
6 such total which were paid by a corporation which
7 conducts business operations in an Enterprise Zone or
8 zones created under the Illinois Enterprise Zone Act
9 and conducts substantially all of its operations in an
10 Enterprise Zone or zones;

11 (L) An amount equal to those dividends included in
12 such total that were paid by a corporation that
13 conducts business operations in a federally designated
14 Foreign Trade Zone or Sub-Zone and that is designated a
15 High Impact Business located in Illinois; provided
16 that dividends eligible for the deduction provided in
17 subparagraph (K) of paragraph 2 of this subsection
18 shall not be eligible for the deduction provided under
19 this subparagraph (L);

20 (M) For any taxpayer that is a financial
21 organization within the meaning of Section 304(c) of
22 this Act, an amount included in such total as interest
23 income from a loan or loans made by such taxpayer to a
24 borrower, to the extent that such a loan is secured by
25 property which is eligible for the Enterprise Zone
26 Investment Credit. To determine the portion of a loan
27 or loans that is secured by property eligible for a
28 Section 201(f) investment credit to the borrower, the
29 entire principal amount of the loan or loans between
30 the taxpayer and the borrower should be divided into
31 the basis of the Section 201(f) investment credit
32 property which secures the loan or loans, using for
33 this purpose the original basis of such property on the
34 date that it was placed in service in the Enterprise

1 Zone. The subtraction modification available to
2 taxpayer in any year under this subsection shall be
3 that portion of the total interest paid by the borrower
4 with respect to such loan attributable to the eligible
5 property as calculated under the previous sentence;

6 (M-1) For any taxpayer that is a financial
7 organization within the meaning of Section 304(c) of
8 this Act, an amount included in such total as interest
9 income from a loan or loans made by such taxpayer to a
10 borrower, to the extent that such a loan is secured by
11 property which is eligible for the High Impact Business
12 Investment Credit. To determine the portion of a loan
13 or loans that is secured by property eligible for a
14 Section 201(h) investment credit to the borrower, the
15 entire principal amount of the loan or loans between
16 the taxpayer and the borrower should be divided into
17 the basis of the Section 201(h) investment credit
18 property which secures the loan or loans, using for
19 this purpose the original basis of such property on the
20 date that it was placed in service in a federally
21 designated Foreign Trade Zone or Sub-Zone located in
22 Illinois. No taxpayer that is eligible for the
23 deduction provided in subparagraph (M) of paragraph
24 (2) of this subsection shall be eligible for the
25 deduction provided under this subparagraph (M-1). The
26 subtraction modification available to taxpayers in any
27 year under this subsection shall be that portion of the
28 total interest paid by the borrower with respect to
29 such loan attributable to the eligible property as
30 calculated under the previous sentence;

31 (N) Two times any contribution made during the
32 taxable year to a designated zone organization to the
33 extent that the contribution (i) qualifies as a
34 charitable contribution under subsection (c) of

1 Section 170 of the Internal Revenue Code and (ii) must,
2 by its terms, be used for a project approved by the
3 Department of Commerce and Economic Opportunity
4 ~~Community Affairs~~ under Section 11 of the Illinois
5 Enterprise Zone Act;

6 (O) An amount equal to: (i) 85% for taxable years
7 ending on or before December 31, 1992, or, a percentage
8 equal to the percentage allowable under Section
9 243(a)(1) of the Internal Revenue Code of 1986 for
10 taxable years ending after December 31, 1992, of the
11 amount by which dividends included in taxable income
12 and received from a corporation that is not created or
13 organized under the laws of the United States or any
14 state or political subdivision thereof, including, for
15 taxable years ending on or after December 31, 1988,
16 dividends received or deemed received or paid or deemed
17 paid under Sections 951 through 964 of the Internal
18 Revenue Code, exceed the amount of the modification
19 provided under subparagraph (G) of paragraph (2) of
20 this subsection (b) which is related to such dividends;
21 plus (ii) 100% of the amount by which dividends,
22 included in taxable income and received, including,
23 for taxable years ending on or after December 31, 1988,
24 dividends received or deemed received or paid or deemed
25 paid under Sections 951 through 964 of the Internal
26 Revenue Code, from any such corporation specified in
27 clause (i) that would but for the provisions of Section
28 1504 (b) (3) of the Internal Revenue Code be treated as
29 a member of the affiliated group which includes the
30 dividend recipient, exceed the amount of the
31 modification provided under subparagraph (G) of
32 paragraph (2) of this subsection (b) which is related
33 to such dividends;

34 (P) An amount equal to any contribution made to a

1 job training project established pursuant to the Tax
2 Increment Allocation Redevelopment Act;

3 (Q) An amount equal to the amount of the deduction
4 used to compute the federal income tax credit for
5 restoration of substantial amounts held under claim of
6 right for the taxable year pursuant to Section 1341 of
7 the Internal Revenue Code of 1986;

8 (R) In the case of an attorney-in-fact with respect
9 to whom an interinsurer or a reciprocal insurer has
10 made the election under Section 835 of the Internal
11 Revenue Code, 26 U.S.C. 835, an amount equal to the
12 excess, if any, of the amounts paid or incurred by that
13 interinsurer or reciprocal insurer in the taxable year
14 to the attorney-in-fact over the deduction allowed to
15 that interinsurer or reciprocal insurer with respect
16 to the attorney-in-fact under Section 835(b) of the
17 Internal Revenue Code for the taxable year;

18 (S) For taxable years ending on or after December
19 31, 1997, in the case of a Subchapter S corporation, an
20 amount equal to all amounts of income allocable to a
21 shareholder subject to the Personal Property Tax
22 Replacement Income Tax imposed by subsections (c) and
23 (d) of Section 201 of this Act, including amounts
24 allocable to organizations exempt from federal income
25 tax by reason of Section 501(a) of the Internal Revenue
26 Code. This subparagraph (S) is exempt from the
27 provisions of Section 250;

28 (T) For taxable years 2001 and thereafter, for the
29 taxable year in which the bonus depreciation deduction
30 (30% of the adjusted basis of the qualified property)
31 is taken on the taxpayer's federal income tax return
32 under subsection (k) of Section 168 of the Internal
33 Revenue Code and for each applicable taxable year
34 thereafter, an amount equal to "x", where:

1 (1) "y" equals the amount of the depreciation
2 deduction taken for the taxable year on the
3 taxpayer's federal income tax return on property
4 for which the bonus depreciation deduction (30% of
5 the adjusted basis of the qualified property) was
6 taken in any year under subsection (k) of Section
7 168 of the Internal Revenue Code, but not including
8 the bonus depreciation deduction; and

9 (2) "x" equals "y" multiplied by 30 and then
10 divided by 70 (or "y" multiplied by 0.429).

11 The aggregate amount deducted under this
12 subparagraph in all taxable years for any one piece of
13 property may not exceed the amount of the bonus
14 depreciation deduction (30% of the adjusted basis of
15 the qualified property) taken on that property on the
16 taxpayer's federal income tax return under subsection
17 (k) of Section 168 of the Internal Revenue Code; and

18 (U) If the taxpayer reports a capital gain or loss
19 on the taxpayer's federal income tax return for the
20 taxable year based on a sale or transfer of property
21 for which the taxpayer was required in any taxable year
22 to make an addition modification under subparagraph
23 (E-10), then an amount equal to that addition
24 modification.

25 The taxpayer is allowed to take the deduction under
26 this subparagraph only once with respect to any one
27 piece of property;

28 (V) The amount of: (i) any interest income (net of
29 the deductions allocable thereto) taken into account
30 for the taxable year with respect to a transaction with
31 a taxpayer that is required to make an addition
32 modification with respect to such transaction under
33 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
34 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed

1 the amount of such addition modification and (ii) any
2 income from intangible property (net of the deductions
3 allocable thereto) taken into account for the taxable
4 year with respect to a transaction with a taxpayer that
5 is required to make an addition modification with
6 respect to such transaction under Section
7 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
8 203(d)(2)(D-8), but not to exceed the amount of such
9 addition modification;

10 (W) An amount equal to the interest income taken
11 into account for the taxable year (net of the
12 deductions allocable thereto) with respect to
13 transactions with a foreign person who would be a
14 member of the taxpayer's unitary business group but for
15 the fact that the foreign person's business activity
16 outside the United States is 80% or more of that
17 person's total business activity, but not to exceed the
18 addition modification required to be made for the same
19 taxable year under Section 203(b)(2)(E-13) for
20 interest paid, accrued, or incurred, directly or
21 indirectly, to the same foreign person; and

22 (X) An amount equal to the income from intangible
23 property taken into account for the taxable year (net
24 of the deductions allocable thereto) with respect to
25 transactions with a foreign person who would be a
26 member of the taxpayer's unitary business group but for
27 the fact that the foreign person's business activity
28 outside the United States is 80% or more of that
29 person's total business activity, but not to exceed the
30 addition modification required to be made for the same
31 taxable year under Section 203(b)(2)(E-14) for
32 intangible expenses and costs paid, accrued, or
33 incurred, directly or indirectly, to the same foreign
34 person.

1 (3) Special rule. For purposes of paragraph (2) (A),
2 "gross income" in the case of a life insurance company, for
3 tax years ending on and after December 31, 1994, shall mean
4 the gross investment income for the taxable year.

5 (c) Trusts and estates.

6 (1) In general. In the case of a trust or estate, base
7 income means an amount equal to the taxpayer's taxable
8 income for the taxable year as modified by paragraph (2).

9 (2) Modifications. Subject to the provisions of
10 paragraph (3), the taxable income referred to in paragraph
11 (1) shall be modified by adding thereto the sum of the
12 following amounts:

13 (A) An amount equal to all amounts paid or accrued
14 to the taxpayer as interest or dividends during the
15 taxable year to the extent excluded from gross income
16 in the computation of taxable income;

17 (B) In the case of (i) an estate, \$600; (ii) a
18 trust which, under its governing instrument, is
19 required to distribute all of its income currently,
20 \$300; and (iii) any other trust, \$100, but in each such
21 case, only to the extent such amount was deducted in
22 the computation of taxable income;

23 (C) An amount equal to the amount of tax imposed by
24 this Act to the extent deducted from gross income in
25 the computation of taxable income for the taxable year;

26 (D) The amount of any net operating loss deduction
27 taken in arriving at taxable income, other than a net
28 operating loss carried forward from a taxable year
29 ending prior to December 31, 1986;

30 (E) For taxable years in which a net operating loss
31 carryback or carryforward from a taxable year ending
32 prior to December 31, 1986 is an element of taxable
33 income under paragraph (1) of subsection (e) or

1 subparagraph (E) of paragraph (2) of subsection (e),
2 the amount by which addition modifications other than
3 those provided by this subparagraph (E) exceeded
4 subtraction modifications in such taxable year, with
5 the following limitations applied in the order that
6 they are listed:

7 (i) the addition modification relating to the
8 net operating loss carried back or forward to the
9 taxable year from any taxable year ending prior to
10 December 31, 1986 shall be reduced by the amount of
11 addition modification under this subparagraph (E)
12 which related to that net operating loss and which
13 was taken into account in calculating the base
14 income of an earlier taxable year, and

15 (ii) the addition modification relating to the
16 net operating loss carried back or forward to the
17 taxable year from any taxable year ending prior to
18 December 31, 1986 shall not exceed the amount of
19 such carryback or carryforward;

20 For taxable years in which there is a net operating
21 loss carryback or carryforward from more than one other
22 taxable year ending prior to December 31, 1986, the
23 addition modification provided in this subparagraph
24 (E) shall be the sum of the amounts computed
25 independently under the preceding provisions of this
26 subparagraph (E) for each such taxable year;

27 (F) For taxable years ending on or after January 1,
28 1989, an amount equal to the tax deducted pursuant to
29 Section 164 of the Internal Revenue Code if the trust
30 or estate is claiming the same tax for purposes of the
31 Illinois foreign tax credit under Section 601 of this
32 Act;

33 (G) An amount equal to the amount of the capital
34 gain deduction allowable under the Internal Revenue

1 Code, to the extent deducted from gross income in the
2 computation of taxable income;

3 (G-5) For taxable years ending after December 31,
4 1997, an amount equal to any eligible remediation costs
5 that the trust or estate deducted in computing adjusted
6 gross income and for which the trust or estate claims a
7 credit under subsection (l) of Section 201;

8 (G-10) For taxable years 2001 and thereafter, an
9 amount equal to the bonus depreciation deduction (30%
10 of the adjusted basis of the qualified property) taken
11 on the taxpayer's federal income tax return for the
12 taxable year under subsection (k) of Section 168 of the
13 Internal Revenue Code; and

14 (G-11) If the taxpayer reports a capital gain or
15 loss on the taxpayer's federal income tax return for
16 the taxable year based on a sale or transfer of
17 property for which the taxpayer was required in any
18 taxable year to make an addition modification under
19 subparagraph (G-10), then an amount equal to the
20 aggregate amount of the deductions taken in all taxable
21 years under subparagraph (R) with respect to that
22 property.

23 The taxpayer is required to make the addition
24 modification under this subparagraph only once with
25 respect to any one piece of property;

26 (G-12) (i) For taxable years ending on or after
27 December 31, 2004, an amount equal to the amount
28 otherwise allowed as a deduction in computing base
29 income for interest paid, accrued, or incurred,
30 directly or indirectly, to a foreign person who would
31 be a member of the same unitary business group but for
32 the fact that the foreign person's business activity
33 outside the United States is 80% or more of the foreign
34 person's total business activity. The addition

1 modification required by this subparagraph shall be
2 reduced to the extent that dividends were included in
3 base income for the same taxable year and received by
4 the taxpayer or by a member of the taxpayer's unitary
5 business group (including amounts included in gross
6 income pursuant to Sections 951 through 964 of the
7 Internal Revenue Code and amounts included in gross
8 income under Section 78 of the Internal Revenue Code)
9 with respect to the stock of the same person to whom
10 the interest was paid, accrued, or incurred. (ii) This
11 subparagraph does not apply to:

12
13 (1) an item of interest paid, accrued, or
14 incurred, directly or indirectly, to a foreign
15 person that is subject in a foreign country to a
16 tax on or measured by net income with respect to
17 such interest;

18 (2) an item of interest, to the extent that the
19 interest expense of the foreign person receiving
20 such interest during the same taxable year that is
21 directly or indirectly paid, accrued or incurred
22 to any person that is not a related party of either
23 the taxpayer or the foreign person exceeds that
24 foreign person's interest income (excluding the
25 interest receivable from the taxpayer) for the
26 taxable year, but only if the taxpayer establishes
27 by a preponderance of the evidence that the
28 transaction giving rise to the interest expense
29 between the taxpayer and the foreign person did not
30 have as a principal purpose the avoidance of any
31 portion of the tax that would otherwise be due.

32 (3) an item of interest paid, accrued, or
33 incurred pursuant to a contract that was binding
34 prior to the time the parties to the contract

1 became related parties, was not entered into as
2 part of the process by which the parties became
3 related parties, and has continually been enforced
4 according to its terms by each party;

5 (4) an item of interest if the taxpayer
6 establishes by clear and convincing evidence, as
7 determined by the Department, that the adjustments
8 are unreasonable; or if the taxpayer and the
9 Director agree in writing to the application or use
10 of an alternative method of apportionment under
11 section 304(f), or

12 (5) a taxpayer who is a small business person.

13 For purposes of this subparagraph, "related
14 parties" include persons disallowed a deduction for
15 losses by paragraphs (b), (c), and (f)(1) of Section
16 267 of the Internal Revenue Code by virtue of being a
17 related taxpayer, as well as a partner and its
18 partnership and each of the other partners in that
19 partnership; and

20 (G-13) For taxable years ending on or after
21 December 31, 2004, an amount equal to the amount of
22 intangible expenses and costs otherwise allowed as a
23 deduction in computing base income, and that were paid,
24 accrued, or incurred, directly or indirectly, to a
25 foreign person who would be a member of the same
26 unitary business group but for the fact that the
27 foreign person's business activity outside the United
28 States is 80% or more of that person's total business
29 activity. The addition modification required by this
30 subparagraph shall be reduced to the extent that
31 dividends were included in base income for the same
32 taxable year and received by the taxpayer or by a
33 member of the taxpayer's unitary business group
34 (including amounts included in gross income pursuant

1 to Sections 951 through 964 of the Internal Revenue
2 Code and amounts included in gross income under Section
3 78 of the Internal Revenue Code) with respect to the
4 stock of the same person to whom the intangible
5 expenses and costs were directly or indirectly paid,
6 incurred, or accrued. The preceding sentence shall not
7 apply to the extent that the same dividends caused a
8 reduction to the addition modification required under
9 Section 203 (c) (2) (G-12) of this Act. This
10 subparagraph shall not apply to any item of intangible
11 expenses or costs paid, accrued, or incurred, directly
12 or indirectly, from a transaction with a foreign person
13 who is subject in a foreign country to a tax on or
14 measured by net income with respect to such item. As
15 used in this subparagraph, the term "intangible
16 expenses and costs" includes: (1) expenses, losses,
17 and costs for or related to the direct or indirect
18 acquisition, use, maintenance or management,
19 ownership, sale, exchange, or any other disposition of
20 intangible property; (2) losses incurred, directly or
21 indirectly, from factoring transactions or discounting
22 transactions; (3) royalty, patent, technical, and
23 copyright fees; (4) licensing fees; and (5) other
24 similar expenses and costs. For purposes of this
25 subparagraph, "intangible property" includes patents,
26 patent applications, trade names, trademarks, service
27 marks, copyrights, mask works, trade secrets, and
28 similar types of intangible assets. This subparagraph
29 (G-13) shall not apply to a taxpayer who is a small
30 business person.

31 and by deducting from the total so obtained the sum of the
32 following amounts:

33 (H) An amount equal to all amounts included in such
34 total pursuant to the provisions of Sections 402(a),

1 402(c), 403(a), 403(b), 406(a), 407(a) and 408 of the
2 Internal Revenue Code or included in such total as
3 distributions under the provisions of any retirement
4 or disability plan for employees of any governmental
5 agency or unit, or retirement payments to retired
6 partners, which payments are excluded in computing net
7 earnings from self employment by Section 1402 of the
8 Internal Revenue Code and regulations adopted pursuant
9 thereto;

10 (I) The valuation limitation amount;

11 (J) An amount equal to the amount of any tax
12 imposed by this Act which was refunded to the taxpayer
13 and included in such total for the taxable year;

14 (K) An amount equal to all amounts included in
15 taxable income as modified by subparagraphs (A), (B),
16 (C), (D), (E), (F) and (G) which are exempt from
17 taxation by this State either by reason of its statutes
18 or Constitution or by reason of the Constitution,
19 treaties or statutes of the United States; provided
20 that, in the case of any statute of this State or the
21 United States, any treaty of the United States, the
22 Illinois Constitution, or the United States
23 Constitution that exempts income derived from bonds or
24 other obligations from the tax imposed under this Act,
25 the amount exempted shall be the income interest net of
26 bond premium amortization, interest expense incurred
27 on indebtedness to carry the bond or other obligation,
28 expenses incurred in producing the income to be
29 deducted and any other expenses deducted on the federal
30 return that would not have been allowed under Internal
31 Revenue Code Section 265 if the interest were exempt
32 from federal tax. The amount of expenses to be taken
33 into account under this provision cannot exceed the
34 amount of income which is exempted. The changes made to

1 this subparagraph (K) by this amendatory Act of the
2 93rd General Assembly shall not apply to a small
3 business person;

4 (L) With the exception of any amounts subtracted
5 under subparagraph (K), an amount equal to the sum of
6 all amounts disallowed as deductions by (i) Sections
7 171(a) (2) and 265(a) (2) of the Internal Revenue Code,
8 as now or hereafter amended, and all amounts of
9 expenses allocable to interest and disallowed as
10 deductions by Section 265(1) of the Internal Revenue
11 Code of 1954, as now or hereafter amended; and (ii) for
12 taxable years ending on or after August 13, 1999,
13 Sections 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of
14 the Internal Revenue Code; the provisions of this
15 subparagraph are exempt from the provisions of Section
16 250;

17 (M) An amount equal to those dividends included in
18 such total which were paid by a corporation which
19 conducts business operations in an Enterprise Zone or
20 zones created under the Illinois Enterprise Zone Act
21 and conducts substantially all of its operations in an
22 Enterprise Zone or Zones;

23 (N) An amount equal to any contribution made to a
24 job training project established pursuant to the Tax
25 Increment Allocation Redevelopment Act;

26 (O) An amount equal to those dividends included in
27 such total that were paid by a corporation that
28 conducts business operations in a federally designated
29 Foreign Trade Zone or Sub-Zone and that is designated a
30 High Impact Business located in Illinois; provided
31 that dividends eligible for the deduction provided in
32 subparagraph (M) of paragraph (2) of this subsection
33 shall not be eligible for the deduction provided under
34 this subparagraph (O);

1 (P) An amount equal to the amount of the deduction
2 used to compute the federal income tax credit for
3 restoration of substantial amounts held under claim of
4 right for the taxable year pursuant to Section 1341 of
5 the Internal Revenue Code of 1986;

6 (Q) For taxable year 1999 and thereafter, an amount
7 equal to the amount of any (i) distributions, to the
8 extent includible in gross income for federal income
9 tax purposes, made to the taxpayer because of his or
10 her status as a victim of persecution for racial or
11 religious reasons by Nazi Germany or any other Axis
12 regime or as an heir of the victim and (ii) items of
13 income, to the extent includible in gross income for
14 federal income tax purposes, attributable to, derived
15 from or in any way related to assets stolen from,
16 hidden from, or otherwise lost to a victim of
17 persecution for racial or religious reasons by Nazi
18 Germany or any other Axis regime immediately prior to,
19 during, and immediately after World War II, including,
20 but not limited to, interest on the proceeds receivable
21 as insurance under policies issued to a victim of
22 persecution for racial or religious reasons by Nazi
23 Germany or any other Axis regime by European insurance
24 companies immediately prior to and during World War II;
25 provided, however, this subtraction from federal
26 adjusted gross income does not apply to assets acquired
27 with such assets or with the proceeds from the sale of
28 such assets; provided, further, this paragraph shall
29 only apply to a taxpayer who was the first recipient of
30 such assets after their recovery and who is a victim of
31 persecution for racial or religious reasons by Nazi
32 Germany or any other Axis regime or as an heir of the
33 victim. The amount of and the eligibility for any
34 public assistance, benefit, or similar entitlement is

1 not affected by the inclusion of items (i) and (ii) of
2 this paragraph in gross income for federal income tax
3 purposes. This paragraph is exempt from the provisions
4 of Section 250;

5 (R) For taxable years 2001 and thereafter, for the
6 taxable year in which the bonus depreciation deduction
7 (30% of the adjusted basis of the qualified property)
8 is taken on the taxpayer's federal income tax return
9 under subsection (k) of Section 168 of the Internal
10 Revenue Code and for each applicable taxable year
11 thereafter, an amount equal to "x", where:

12 (1) "y" equals the amount of the depreciation
13 deduction taken for the taxable year on the
14 taxpayer's federal income tax return on property
15 for which the bonus depreciation deduction (30% of
16 the adjusted basis of the qualified property) was
17 taken in any year under subsection (k) of Section
18 168 of the Internal Revenue Code, but not including
19 the bonus depreciation deduction; and

20 (2) "x" equals "y" multiplied by 30 and then
21 divided by 70 (or "y" multiplied by 0.429).

22 The aggregate amount deducted under this
23 subparagraph in all taxable years for any one piece of
24 property may not exceed the amount of the bonus
25 depreciation deduction (30% of the adjusted basis of
26 the qualified property) taken on that property on the
27 taxpayer's federal income tax return under subsection
28 (k) of Section 168 of the Internal Revenue Code; and

29 (S) If the taxpayer reports a capital gain or loss
30 on the taxpayer's federal income tax return for the
31 taxable year based on a sale or transfer of property
32 for which the taxpayer was required in any taxable year
33 to make an addition modification under subparagraph
34 (G-10), then an amount equal to that addition

1 modification.

2 The taxpayer is allowed to take the deduction under
3 this subparagraph only once with respect to any one
4 piece of property;~~;~~

5 (T) The amount of (i) any interest income (net of
6 the deductions allocable thereto) taken into account
7 for the taxable year with respect to a transaction with
8 a taxpayer that is required to make an addition
9 modification with respect to such transaction under
10 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
11 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
12 the amount of such addition modification and (ii) any
13 income from intangible property (net of the deductions
14 allocable thereto) taken into account for the taxable
15 year with respect to a transaction with a taxpayer that
16 is required to make an addition modification with
17 respect to such transaction under Section
18 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
19 203(d)(2)(D-8), but not to exceed the amount of such
20 addition modification;

21 (U) An amount equal to the interest income taken
22 into account for the taxable year (net of the
23 deductions allocable thereto) with respect to
24 transactions with a foreign person who would be a
25 member of the taxpayer's unitary business group but for
26 the fact the foreign person's business activity
27 outside the United States is 80% or more of that
28 person's total business activity, but not to exceed the
29 addition modification required to be made for the same
30 taxable year under Section 203(c)(2)(G-12) for
31 interest paid, accrued, or incurred, directly or
32 indirectly, to the same foreign person; and

33 (V) An amount equal to the income from intangible
34 property taken into account for the taxable year (net

1 of the deductions allocable thereto) with respect to
2 transactions with a foreign person who would be a
3 member of the taxpayer's unitary business group but for
4 the fact that the foreign person's business activity
5 outside the United States is 80% or more of that
6 person's total business activity, but not to exceed the
7 addition modification required to be made for the same
8 taxable year under Section 203(c)(2)(G-13) for
9 intangible expenses and costs paid, accrued, or
10 incurred, directly or indirectly, to the same foreign
11 person.

12 (3) Limitation. The amount of any modification
13 otherwise required under this subsection shall, under
14 regulations prescribed by the Department, be adjusted by
15 any amounts included therein which were properly paid,
16 credited, or required to be distributed, or permanently set
17 aside for charitable purposes pursuant to Internal Revenue
18 Code Section 642(c) during the taxable year.

19 (d) Partnerships.

20 (1) In general. In the case of a partnership, base
21 income means an amount equal to the taxpayer's taxable
22 income for the taxable year as modified by paragraph (2).

23 (2) Modifications. The taxable income referred to in
24 paragraph (1) shall be modified by adding thereto the sum
25 of the following amounts:

26 (A) An amount equal to all amounts paid or accrued
27 to the taxpayer as interest or dividends during the
28 taxable year to the extent excluded from gross income
29 in the computation of taxable income;

30 (B) An amount equal to the amount of tax imposed by
31 this Act to the extent deducted from gross income for
32 the taxable year;

33 (C) The amount of deductions allowed to the

1 partnership pursuant to Section 707 (c) of the Internal
2 Revenue Code in calculating its taxable income;

3 (D) An amount equal to the amount of the capital
4 gain deduction allowable under the Internal Revenue
5 Code, to the extent deducted from gross income in the
6 computation of taxable income;

7 (D-5) For taxable years 2001 and thereafter, an
8 amount equal to the bonus depreciation deduction (30%
9 of the adjusted basis of the qualified property) taken
10 on the taxpayer's federal income tax return for the
11 taxable year under subsection (k) of Section 168 of the
12 Internal Revenue Code; ~~and~~

13 (D-6) If the taxpayer reports a capital gain or
14 loss on the taxpayer's federal income tax return for
15 the taxable year based on a sale or transfer of
16 property for which the taxpayer was required in any
17 taxable year to make an addition modification under
18 subparagraph (D-5), then an amount equal to the
19 aggregate amount of the deductions taken in all taxable
20 years under subparagraph (O) with respect to that
21 property.†

22 The taxpayer is required to make the addition
23 modification under this subparagraph only once with
24 respect to any one piece of property;

25 (D-7) (i) For taxable years ending on or after
26 December 31, 2004, an amount equal to the amount
27 otherwise allowed as a deduction in computing base
28 income for interest paid, accrued, or incurred,
29 directly or indirectly, to a foreign person who would
30 be a member of the same unitary business group but for
31 the fact that the foreign person's business activity
32 outside the United States is 80% or more of the foreign
33 person's total business activity. The addition
34 modification required by this subparagraph shall be

1 reduced to the extent that dividends were included in
2 base income for the same taxable year and received by
3 the taxpayer or by a member of the taxpayer's unitary
4 business group (including amounts included in gross
5 income pursuant to Sections 951 through 964 of the
6 Internal Revenue Code and amounts included in gross
7 income under Section 78 of the Internal Revenue Code)
8 with respect to the stock of the same person to whom
9 the interest was paid, accrued, or incurred. (ii) This
10 subparagraph does not apply to:

11 (1) an item of interest paid, accrued, or
12 incurred, directly or indirectly, to a foreign
13 person that is subject in a foreign country to a
14 tax on or measured by net income with respect to
15 such interest;

16 (2) an item of interest, to the extent that the
17 interest expense of the foreign person receiving
18 such interest during the same taxable year that is
19 directly or indirectly paid, accrued or incurred
20 to any person that is not a related party of either
21 the taxpayer or the foreign person exceeds that
22 foreign person's interest income (excluding the
23 interest receivable from the taxpayer) for the
24 taxable year, but only if the taxpayer establishes
25 by a preponderance of the evidence that the
26 transaction giving rise to the interest expense
27 between the taxpayer and the foreign person did not
28 have as a principal purpose the avoidance of any
29 portion of the tax that would otherwise be due;

30 (3) an item of interest paid, accrued, or
31 incurred pursuant to a contract that was binding
32 prior to the time the parties to the contract
33 became related parties, was not entered into as
34 part of the process by which the parties became

1 related parties, and has continually been enforced
2 according to its terms by each party;

3 (4) an item of interest if the taxpayer
4 establishes by clear and convincing evidence, as
5 determined by the Department, that the adjustments
6 are unreasonable; or if the taxpayer and the
7 Director agree in writing to the application or use
8 of an alternative method of apportionment under
9 section 304(f); or

10 (5) a taxpayer who is a small business person.

11 For purposes of this subparagraph, "related
12 parties" include persons disallowed a deduction for
13 losses by paragraphs (b), (c), and (f)(1) of Section
14 267 of the Internal Revenue Code by virtue of being a
15 related taxpayer, as well as a partner and its
16 partnership and each of the other partners in that
17 partnership; and

18 (D-8) For taxable years ending on or after December
19 31, 2004, an amount equal to the amount of intangible
20 expenses and costs otherwise allowed as a deduction in
21 computing base income, and that were paid, accrued, or
22 incurred, directly or indirectly, to a foreign person
23 who would be a member of the same unitary business
24 group but for the fact that the foreign person's
25 business activity outside the United States is 80% or
26 more of that person's total business activity. The
27 addition modification required by this subparagraph
28 shall be reduced to the extent that dividends were
29 included in base income for the same taxable year and
30 received by the taxpayer or by a member of the
31 taxpayer's unitary business group (including amounts
32 included in gross income pursuant to Sections 951
33 through 964 of the Internal Revenue Code and amounts
34 included in gross income under Section 78 of the

1 Internal Revenue Code) with respect to the stock of the
2 same person to whom the intangible expenses and costs
3 were directly or indirectly paid, incurred or accrued.
4 The preceding sentence shall not apply to the extent
5 that the same dividends caused a reduction to the
6 addition modification required under Section 203
7 (d) (2) (D-7) of this Act. This subparagraph shall not
8 apply to any item of intangible expenses or costs paid,
9 accrued, or incurred, directly or indirectly, from a
10 transaction with a foreign person that is subject in a
11 foreign country to a tax on or measured by net income
12 with respect to such item. As used in this
13 subparagraph, the term "intangible expenses and costs"
14 includes (1) expenses, losses, and costs for, or
15 related to, the direct or indirect acquisition, use,
16 maintenance or management, ownership, sale, exchange,
17 or any other disposition of intangible property; (2)
18 losses incurred, directly or indirectly, from
19 factoring transactions or discounting transactions;
20 (3) royalty, patent, technical, and copyright fees;
21 (4) licensing fees; and (5) other similar expenses and
22 costs. For purposes of this subparagraph, "intangible
23 property" includes patents, patent applications, trade
24 names, trademarks, service marks, copyrights, mask
25 works, trade secrets, and similar types of intangible
26 assets. This subparagraph shall not apply to a taxpayer
27 who is a small business person.

28 and by deducting from the total so obtained the following
29 amounts:

30 (E) The valuation limitation amount;

31 (F) An amount equal to the amount of any tax
32 imposed by this Act which was refunded to the taxpayer
33 and included in such total for the taxable year;

34 (G) An amount equal to all amounts included in

1 taxable income as modified by subparagraphs (A), (B),
2 (C) and (D) which are exempt from taxation by this
3 State either by reason of its statutes or Constitution
4 or by reason of the Constitution, treaties or statutes
5 of the United States; provided that, in the case of any
6 statute of this State or the United States, any treaty
7 of the United States, the Illinois Constitution, or the
8 United States Constitution that exempts income derived
9 from bonds or other obligations from the tax imposed
10 under this Act, the amount exempted shall be the
11 interest net of bond premium amortization, interest
12 expense incurred on indebtedness to carry the bond or
13 other obligation, expenses incurred in producing the
14 income to be deducted and any other expenses deducted
15 on the federal return that would not have been allowed
16 under Internal Revenue Code Section 265 if the interest
17 were exempt from federal tax. The amount of expenses to
18 be taken into account under this provision cannot
19 exceed the amount of income which is exempted. The
20 changes made to this subparagraph (G) by this
21 amendatory Act of the 93rd General Assembly shall not
22 apply to a small business person;

23 (H) Any income of the partnership which
24 constitutes personal service income as defined in
25 Section 1348 (b) (1) of the Internal Revenue Code (as
26 in effect December 31, 1981) or a reasonable allowance
27 for compensation paid or accrued for services rendered
28 by partners to the partnership, whichever is greater;

29 (I) An amount equal to all amounts of income
30 distributable to an entity subject to the Personal
31 Property Tax Replacement Income Tax imposed by
32 subsections (c) and (d) of Section 201 of this Act
33 including amounts distributable to organizations
34 exempt from federal income tax by reason of Section

1 501(a) of the Internal Revenue Code;

2 (J) With the exception of any amounts subtracted
3 under subparagraph (G), an amount equal to the sum of
4 all amounts disallowed as deductions by (i) Sections
5 171(a) (2), and 265(2) of the Internal Revenue Code of
6 1954, as now or hereafter amended, and all amounts of
7 expenses allocable to interest and disallowed as
8 deductions by Section 265(1) of the Internal Revenue
9 Code, as now or hereafter amended; and (ii) for taxable
10 years ending on or after August 13, 1999, Sections
11 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of the
12 Internal Revenue Code; the provisions of this
13 subparagraph are exempt from the provisions of Section
14 250;

15 (K) An amount equal to those dividends included in
16 such total which were paid by a corporation which
17 conducts business operations in an Enterprise Zone or
18 zones created under the Illinois Enterprise Zone Act,
19 enacted by the 82nd General Assembly, and conducts
20 substantially all of its operations in an Enterprise
21 Zone or Zones;

22 (L) An amount equal to any contribution made to a
23 job training project established pursuant to the Real
24 Property Tax Increment Allocation Redevelopment Act;

25 (M) An amount equal to those dividends included in
26 such total that were paid by a corporation that
27 conducts business operations in a federally designated
28 Foreign Trade Zone or Sub-Zone and that is designated a
29 High Impact Business located in Illinois; provided
30 that dividends eligible for the deduction provided in
31 subparagraph (K) of paragraph (2) of this subsection
32 shall not be eligible for the deduction provided under
33 this subparagraph (M);

34 (N) An amount equal to the amount of the deduction

1 used to compute the federal income tax credit for
2 restoration of substantial amounts held under claim of
3 right for the taxable year pursuant to Section 1341 of
4 the Internal Revenue Code of 1986;

5 (O) For taxable years 2001 and thereafter, for the
6 taxable year in which the bonus depreciation deduction
7 (30% of the adjusted basis of the qualified property)
8 is taken on the taxpayer's federal income tax return
9 under subsection (k) of Section 168 of the Internal
10 Revenue Code and for each applicable taxable year
11 thereafter, an amount equal to "x", where:

12 (1) "y" equals the amount of the depreciation
13 deduction taken for the taxable year on the
14 taxpayer's federal income tax return on property
15 for which the bonus depreciation deduction (30% of
16 the adjusted basis of the qualified property) was
17 taken in any year under subsection (k) of Section
18 168 of the Internal Revenue Code, but not including
19 the bonus depreciation deduction; and

20 (2) "x" equals "y" multiplied by 30 and then
21 divided by 70 (or "y" multiplied by 0.429).

22 The aggregate amount deducted under this
23 subparagraph in all taxable years for any one piece of
24 property may not exceed the amount of the bonus
25 depreciation deduction (30% of the adjusted basis of
26 the qualified property) taken on that property on the
27 taxpayer's federal income tax return under subsection
28 (k) of Section 168 of the Internal Revenue Code; and

29 (P) If the taxpayer reports a capital gain or loss
30 on the taxpayer's federal income tax return for the
31 taxable year based on a sale or transfer of property
32 for which the taxpayer was required in any taxable year
33 to make an addition modification under subparagraph
34 (D-5), then an amount equal to that addition

1 modification.

2 The taxpayer is allowed to take the deduction under
3 this subparagraph only once with respect to any one
4 piece of property;

5 (Q) The amount of (i) any interest income (net of
6 the deductions allocable thereto) taken into account
7 for the taxable year with respect to a transaction with
8 a taxpayer that is required to make an addition
9 modification with respect to such transaction under
10 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
11 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
12 the amount of such addition modification and (ii) any
13 income from intangible property (net of the deductions
14 allocable thereto) taken into account for the taxable
15 year with respect to a transaction with a taxpayer that
16 is required to make an addition modification with
17 respect to such transaction under Section
18 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
19 203(d)(2)(D-8), but not to exceed the amount of such
20 addition modification;

21 (R) An amount equal to the interest income taken
22 into account for the taxable year (net of the
23 deductions allocable thereto) with respect to
24 transactions with a foreign person who would be a
25 member of the taxpayer's unitary business group but for
26 the fact that the foreign person's business activity
27 outside the United States is 80% or more of that
28 person's total business activity, but not to exceed the
29 addition modification required to be made for the same
30 taxable year under Section 203(d)(2)(D-7) for interest
31 paid, accrued, or incurred, directly or indirectly, to
32 the same foreign person; and

33 (S) An amount equal to the income from intangible
34 property taken into account for the taxable year (net

1 of the deductions allocable thereto) with respect to
2 transactions with a foreign person who would be a
3 member of the taxpayer's unitary business group but for
4 the fact that the foreign person's business activity
5 outside the United States is 80% or more of that
6 person's total business activity, but not to exceed the
7 addition modification required to be made for the same
8 taxable year under Section 203(d)(2)(D-8) for
9 intangible expenses and costs paid, accrued, or
10 incurred, directly or indirectly, to the same foreign
11 person.

12 (e) Gross income; adjusted gross income; taxable income.

13 (1) In general. Subject to the provisions of paragraph
14 (2) and subsection (b) (3), for purposes of this Section
15 and Section 803(e), a taxpayer's gross income, adjusted
16 gross income, or taxable income for the taxable year shall
17 mean the amount of gross income, adjusted gross income or
18 taxable income properly reportable for federal income tax
19 purposes for the taxable year under the provisions of the
20 Internal Revenue Code. Taxable income may be less than
21 zero. However, for taxable years ending on or after
22 December 31, 1986, net operating loss carryforwards from
23 taxable years ending prior to December 31, 1986, may not
24 exceed the sum of federal taxable income for the taxable
25 year before net operating loss deduction, plus the excess
26 of addition modifications over subtraction modifications
27 for the taxable year. For taxable years ending prior to
28 December 31, 1986, taxable income may never be an amount in
29 excess of the net operating loss for the taxable year as
30 defined in subsections (c) and (d) of Section 172 of the
31 Internal Revenue Code, provided that when taxable income of
32 a corporation (other than a Subchapter S corporation),
33 trust, or estate is less than zero and addition

1 modifications, other than those provided by subparagraph
2 (E) of paragraph (2) of subsection (b) for corporations or
3 subparagraph (E) of paragraph (2) of subsection (c) for
4 trusts and estates, exceed subtraction modifications, an
5 addition modification must be made under those
6 subparagraphs for any other taxable year to which the
7 taxable income less than zero (net operating loss) is
8 applied under Section 172 of the Internal Revenue Code or
9 under subparagraph (E) of paragraph (2) of this subsection
10 (e) applied in conjunction with Section 172 of the Internal
11 Revenue Code.

12 (2) Special rule. For purposes of paragraph (1) of this
13 subsection, the taxable income properly reportable for
14 federal income tax purposes shall mean:

15 (A) Certain life insurance companies. In the case
16 of a life insurance company subject to the tax imposed
17 by Section 801 of the Internal Revenue Code, life
18 insurance company taxable income, plus the amount of
19 distribution from pre-1984 policyholder surplus
20 accounts as calculated under Section 815a of the
21 Internal Revenue Code;

22 (B) Certain other insurance companies. In the case
23 of mutual insurance companies subject to the tax
24 imposed by Section 831 of the Internal Revenue Code,
25 insurance company taxable income;

26 (C) Regulated investment companies. In the case of
27 a regulated investment company subject to the tax
28 imposed by Section 852 of the Internal Revenue Code,
29 investment company taxable income;

30 (D) Real estate investment trusts. In the case of a
31 real estate investment trust subject to the tax imposed
32 by Section 857 of the Internal Revenue Code, real
33 estate investment trust taxable income;

34 (E) Consolidated corporations. In the case of a

1 corporation which is a member of an affiliated group of
2 corporations filing a consolidated income tax return
3 for the taxable year for federal income tax purposes,
4 taxable income determined as if such corporation had
5 filed a separate return for federal income tax purposes
6 for the taxable year and each preceding taxable year
7 for which it was a member of an affiliated group. For
8 purposes of this subparagraph, the taxpayer's separate
9 taxable income shall be determined as if the election
10 provided by Section 243(b) (2) of the Internal Revenue
11 Code had been in effect for all such years;

12 (F) Cooperatives. In the case of a cooperative
13 corporation or association, the taxable income of such
14 organization determined in accordance with the
15 provisions of Section 1381 through 1388 of the Internal
16 Revenue Code;

17 (G) Subchapter S corporations. In the case of: (i)
18 a Subchapter S corporation for which there is in effect
19 an election for the taxable year under Section 1362 of
20 the Internal Revenue Code, the taxable income of such
21 corporation determined in accordance with Section
22 1363(b) of the Internal Revenue Code, except that
23 taxable income shall take into account those items
24 which are required by Section 1363(b)(1) of the
25 Internal Revenue Code to be separately stated; and (ii)
26 a Subchapter S corporation for which there is in effect
27 a federal election to opt out of the provisions of the
28 Subchapter S Revision Act of 1982 and have applied
29 instead the prior federal Subchapter S rules as in
30 effect on July 1, 1982, the taxable income of such
31 corporation determined in accordance with the federal
32 Subchapter S rules as in effect on July 1, 1982; and

33 (H) Partnerships. In the case of a partnership,
34 taxable income determined in accordance with Section

1 703 of the Internal Revenue Code, except that taxable
2 income shall take into account those items which are
3 required by Section 703(a)(1) to be separately stated
4 but which would be taken into account by an individual
5 in calculating his taxable income.

6 (3) Recapture of business expenses on disposition of
7 asset or business. Notwithstanding any other law to the
8 contrary, if in prior years income from an asset or
9 business has been classified as business income and in a
10 later year is demonstrated to be non-business income, then
11 all expenses, without limitation, deducted in prior years
12 related to that asset or business that generated the
13 non-business income shall be added back and recaptured as
14 business income in the year of the disposition of the asset
15 or business. Such amount shall be apportioned to Illinois
16 using the greater of the apportionment fraction computed
17 for the business under Section 304 of this Act for the
18 taxable year or the average of the apportionment fractions
19 computed for the business under Section 304 of this Act for
20 the taxable year and for the 2 immediately preceding
21 taxable years.

22 (f) Valuation limitation amount.

23 (1) In general. The valuation limitation amount
24 referred to in subsections (a) (2) (G), (c) (2) (I) and
25 (d) (2) (E) is an amount equal to:

26 (A) The sum of the pre-August 1, 1969 appreciation
27 amounts (to the extent consisting of gain reportable
28 under the provisions of Section 1245 or 1250 of the
29 Internal Revenue Code) for all property in respect of
30 which such gain was reported for the taxable year; plus

31 (B) The lesser of (i) the sum of the pre-August 1,
32 1969 appreciation amounts (to the extent consisting of
33 capital gain) for all property in respect of which such

1 gain was reported for federal income tax purposes for
2 the taxable year, or (ii) the net capital gain for the
3 taxable year, reduced in either case by any amount of
4 such gain included in the amount determined under
5 subsection (a) (2) (F) or (c) (2) (H).

6 (2) Pre-August 1, 1969 appreciation amount.

7 (A) If the fair market value of property referred
8 to in paragraph (1) was readily ascertainable on August
9 1, 1969, the pre-August 1, 1969 appreciation amount for
10 such property is the lesser of (i) the excess of such
11 fair market value over the taxpayer's basis (for
12 determining gain) for such property on that date
13 (determined under the Internal Revenue Code as in
14 effect on that date), or (ii) the total gain realized
15 and reportable for federal income tax purposes in
16 respect of the sale, exchange or other disposition of
17 such property.

18 (B) If the fair market value of property referred
19 to in paragraph (1) was not readily ascertainable on
20 August 1, 1969, the pre-August 1, 1969 appreciation
21 amount for such property is that amount which bears the
22 same ratio to the total gain reported in respect of the
23 property for federal income tax purposes for the
24 taxable year, as the number of full calendar months in
25 that part of the taxpayer's holding period for the
26 property ending July 31, 1969 bears to the number of
27 full calendar months in the taxpayer's entire holding
28 period for the property.

29 (C) The Department shall prescribe such
30 regulations as may be necessary to carry out the
31 purposes of this paragraph.

32 (g) Double deductions. Unless specifically provided
33 otherwise, nothing in this Section shall permit the same item

1 to be deducted more than once.

2 (h) Legislative intention. Except as expressly provided by
3 this Section there shall be no modifications or limitations on
4 the amounts of income, gain, loss or deduction taken into
5 account in determining gross income, adjusted gross income or
6 taxable income for federal income tax purposes for the taxable
7 year, or in the amount of such items entering into the
8 computation of base income and net income under this Act for
9 such taxable year, whether in respect of property values as of
10 August 1, 1969 or otherwise.

11 (Source: P.A. 91-192, eff. 7-20-99; 91-205, eff. 7-20-99;
12 91-357, eff. 7-29-99; 91-541, eff. 8-13-99; 91-676, eff.
13 12-23-99; 91-845, eff. 6-22-00; 91-913, eff. 1-1-01; 92-16,
14 eff. 6-28-01; 92-244, eff. 8-3-01; 92-439, eff. 8-17-01;
15 92-603, eff. 6-28-02; 92-626, eff. 7-11-02; 92-651, eff.
16 7-11-02; 92-846, eff. 8-23-02; revised 10-15-03.)

17 (35 ILCS 5/205) (from Ch. 120, par. 2-205)

18 Sec. 205. Exempt organizations.

19 (a) Charitable, etc. organizations. The base income of an
20 organization which is exempt from the federal income tax by
21 reason of Section 501(a) of the Internal Revenue Code shall not
22 be determined under section 203 of this Act, but shall be its
23 unrelated business taxable income as determined under section
24 512 of the Internal Revenue Code, without any deduction for the
25 tax imposed by this Act. The standard exemption provided by
26 section 204 of this Act shall not be allowed in determining the
27 net income of an organization to which this subsection applies.

28 (b) Partnerships. A partnership as such shall not be
29 subject to the tax imposed by subsection 201 (a) and (b) of
30 this Act, but shall be subject to the replacement tax imposed
31 by subsection 201 (c) and (d) of this Act and shall compute its
32 base income as described in subsection (d) of Section 203 of

1 this Act. For taxable years ending on or after December 31,
2 2004, an investment partnership, as defined in Section
3 1501(a)(11.5) of this Act, shall not be subject to the tax
4 imposed by subsections (c) and (d) of Section 201 of this Act.

5 A partnership shall file such returns and other information at
6 such time and in such manner as may be required under Article 5
7 of this Act. The partners in a partnership shall be liable for
8 the replacement tax imposed by subsection 201 (c) and (d) of
9 this Act on such partnership, to the extent such tax is not
10 paid by the partnership, as provided under the laws of Illinois
11 governing the liability of partners for the obligations of a
12 partnership. Persons carrying on business as partners shall be
13 liable for the tax imposed by subsection 201 (a) and (b) of
14 this Act only in their separate or individual capacities.

15 (c) Subchapter S corporations. A Subchapter S corporation
16 shall not be subject to the tax imposed by subsection 201 (a)
17 and (b) of this Act but shall be subject to the replacement tax
18 imposed by subsection 201 (c) and (d) of this Act and shall
19 file such returns and other information at such time and in
20 such manner as may be required under Article 5 of this Act.

21 (d) Combat zone death. An individual relieved from the
22 federal income tax for any taxable year by reason of section
23 692 of the Internal Revenue Code shall not be subject to the
24 tax imposed by this Act for such taxable year.

25 (e) Certain trusts. A common trust fund described in
26 Section 584 of the Internal Revenue Code, and any other trust
27 to the extent that the grantor is treated as the owner thereof
28 under sections 671 through 678 of the Internal Revenue Code
29 shall not be subject to the tax imposed by this Act.

30 (f) Certain business activities. A person not otherwise
31 subject to the tax imposed by this Act shall not become subject
32 to the tax imposed by this Act by reason of:

- 33 (1) that person's ownership of tangible personal
34 property located at the premises of a printer in this State

1 with which the person has contracted for printing, or

2 (2) activities of the person's employees or agents
3 located solely at the premises of a printer and related to
4 quality control, distribution, or printing services
5 performed by a printer in the State with which the person
6 has contracted for printing.

7 (Source: P.A. 88-361.)

8 (35 ILCS 5/207) (from Ch. 120, par. 2-207)

9 Sec. 207. Net Losses.

10 (a) If after applying all of the (i) modifications provided
11 for in paragraph (2) of Section 203(b), paragraph (2) of
12 Section 203(c) and paragraph (2) of Section 203(d) and (ii) the
13 allocation and apportionment provisions of Article 3 of this
14 Act and subsection (c) of this Section, the taxpayer's net
15 income results in a loss;

16 (1) for any taxable year ending prior to December 31,
17 1999, such loss shall be allowed as a carryover or
18 carryback deduction in the manner allowed under Section 172
19 of the Internal Revenue Code;

20 (2) for any taxable year ending on or after December
21 31, 1999 and prior to December 31, 2003, such loss shall be
22 allowed as a carryback to each of the 2 taxable years
23 preceding the taxable year of such loss and shall be a net
24 operating loss carryover to each of the 20 taxable years
25 following the taxable year of such loss; and

26 (3) for any taxable year ending on or after December
27 31, 2003, such loss shall be allowed as a net operating
28 loss carryover to each of the 12 taxable years following
29 the taxable year of such loss.

30 (a-5) Election to relinquish carryback and order of
31 application of losses.

32 (A) For losses incurred in tax years ending prior
33 to December 31, 2003, the taxpayer may elect to

1 relinquish the entire carryback period with respect to
2 such loss. Such election shall be made in the form and
3 manner prescribed by the Department and shall be made
4 by the due date (including extensions of time) for
5 filing the taxpayer's return for the taxable year in
6 which such loss is incurred, and such election, once
7 made, shall be irrevocable.

8 (B) The entire amount of such loss shall be carried
9 to the earliest taxable year to which such loss may be
10 carried. The amount of such loss which shall be carried
11 to each of the other taxable years shall be the excess,
12 if any, of the amount of such loss over the sum of the
13 deductions for carryback or carryover of such loss
14 allowable for each of the prior taxable years to which
15 such loss may be carried.

16 (b) Any loss determined under subsection (a) of this
17 Section must be carried back or carried forward in the same
18 manner for purposes of subsections (a) and (b) of Section 201
19 of this Act as for purposes of subsections (c) and (d) of
20 Section 201 of this Act.

21 (c) Notwithstanding any other provision of this Act, for
22 each taxable year ending on or after December 31, 2004, for
23 purposes of computing the loss for the taxable year under
24 subsection (a) of this Section and the deduction taken into
25 account for the taxable year for a net operating loss carryover
26 under paragraphs (1), (2), and (3) of subsection (a) of this
27 Section, the loss and net operating loss carryover shall be
28 reduced in an amount equal to the reduction to the net
29 operating loss and net operating loss carryover to the taxable
30 year, respectively, required under Section 108(b)(2)(A) of the
31 Internal Revenue Code, multiplied by a fraction, the numerator
32 of which is the amount of discharge of indebtedness income that
33 is excluded from gross income for the taxable year (but only if
34 the taxable year ends on or after December 31, 2004) under

1 Section 108(a) of the Internal Revenue Code and that would have
2 been allocated and apportioned to this State under Article 3 of
3 this Act but for that exclusion, and the denominator of which
4 is the total amount of discharge of indebtedness income
5 excluded from gross income under Section 108(a) of the Internal
6 Revenue Code for the taxable year. The reduction required under
7 this subsection (c) shall be made after the determination of
8 Illinois net income for the taxable year in which the
9 indebtedness is discharged. This subsection (c) shall not apply
10 to a taxpayer who is a small business person in the taxable
11 year of the discharge of indebtedness.

12 (Source: P.A. 93-29, eff. 6-20-03.)

13 (35 ILCS 5/304) (from Ch. 120, par. 3-304)

14 Sec. 304. Business income of persons other than residents.

15 (a) In general. The business income of a person other than
16 a resident shall be allocated to this State if such person's
17 business income is derived solely from this State. If a person
18 other than a resident derives business income from this State
19 and one or more other states, then, for tax years ending on or
20 before December 30, 1998, and except as otherwise provided by
21 this Section, such person's business income shall be
22 apportioned to this State by multiplying the income by a
23 fraction, the numerator of which is the sum of the property
24 factor (if any), the payroll factor (if any) and 200% of the
25 sales factor (if any), and the denominator of which is 4
26 reduced by the number of factors other than the sales factor
27 which have a denominator of zero and by an additional 2 if the
28 sales factor has a denominator of zero. For tax years ending on
29 or after December 31, 1998, and except as otherwise provided by
30 this Section, persons other than residents who derive business
31 income from this State and one or more other states shall
32 compute their apportionment factor by weighting their
33 property, payroll, and sales factors as provided in subsection

1 (h) of this Section.

2 (1) Property factor.

3 (A) The property factor is a fraction, the numerator of
4 which is the average value of the person's real and
5 tangible personal property owned or rented and used in the
6 trade or business in this State during the taxable year and
7 the denominator of which is the average value of all the
8 person's real and tangible personal property owned or
9 rented and used in the trade or business during the taxable
10 year.

11 (B) Property owned by the person is valued at its
12 original cost. Property rented by the person is valued at 8
13 times the net annual rental rate. Net annual rental rate is
14 the annual rental rate paid by the person less any annual
15 rental rate received by the person from sub-rentals.

16 (C) The average value of property shall be determined
17 by averaging the values at the beginning and ending of the
18 taxable year but the Director may require the averaging of
19 monthly values during the taxable year if reasonably
20 required to reflect properly the average value of the
21 person's property.

22 (2) Payroll factor.

23 (A) The payroll factor is a fraction, the numerator of
24 which is the total amount paid in this State during the
25 taxable year by the person for compensation, and the
26 denominator of which is the total compensation paid
27 everywhere during the taxable year.

28 (B) Compensation is paid in this State if:

29 (i) The individual's service is performed entirely
30 within this State;

31 (ii) The individual's service is performed both
32 within and without this State, but the service
33 performed without this State is incidental to the
34 individual's service performed within this State; or

1 (iii) Some of the service is performed within this
2 State and either the base of operations, or if there is
3 no base of operations, the place from which the service
4 is directed or controlled is within this State, or the
5 base of operations or the place from which the service
6 is directed or controlled is not in any state in which
7 some part of the service is performed, but the
8 individual's residence is in this State.

9 Beginning with taxable years ending on or after
10 December 31, 1992, for residents of states that impose a
11 comparable tax liability on residents of this State, for
12 purposes of item (i) of this paragraph (B), in the case of
13 persons who perform personal services under personal
14 service contracts for sports performances, services by
15 that person at a sporting event taking place in Illinois
16 shall be deemed to be a performance entirely within this
17 State.

18 (3) Sales factor.

19 (A) The sales factor is a fraction, the numerator of
20 which is the total sales of the person in this State during
21 the taxable year, and the denominator of which is the total
22 sales of the person everywhere during the taxable year.

23 (B) Sales of tangible personal property are in this
24 State if:

25 (i) The property is delivered or shipped to a
26 purchaser, other than the United States government,
27 within this State regardless of the f. o. b. point or
28 other conditions of the sale; or

29 (ii) The property is shipped from an office, store,
30 warehouse, factory or other place of storage in this
31 State and either the purchaser is the United States
32 government or the person is not taxable in the state of
33 the purchaser; provided, however, that premises owned
34 or leased by a person who has independently contracted

1 with the seller for the printing of newspapers,
2 periodicals or books shall not be deemed to be an
3 office, store, warehouse, factory or other place of
4 storage for purposes of this Section. For taxable years
5 ending before December 31, 2004, sales ~~Sales~~ of
6 tangible personal property are not in this State if the
7 seller and purchaser would be members of the same
8 unitary business group but for the fact that either the
9 seller or purchaser is a person with 80% or more of
10 total business activity outside of the United States
11 and the property is purchased for resale.

12 (B-1) Patents, copyrights, trademarks, and similar
13 items of intangible personal property.

14 (i) Gross receipts from the licensing, sale, or
15 other disposition of a patent, copyright, trademark,
16 or similar item of intangible personal property are in
17 this State to the extent the item is utilized in this
18 State during the year the gross receipts are included
19 in gross income.

20 (ii) Place of utilization.

21 (I) A patent is utilized in a state to the
22 extent that it is employed in production,
23 fabrication, manufacturing, or other processing in
24 the state or to the extent that a patented product
25 is produced in the state. If a patent is utilized
26 in more than one state, the extent to which it is
27 utilized in any one state shall be a fraction equal
28 to the gross receipts of the licensee or purchaser
29 from sales or leases of items produced,
30 fabricated, manufactured, or processed within that
31 state using the patent and of patented items
32 produced within that state, divided by the total of
33 such gross receipts for all states in which the
34 patent is utilized.

1 (II) A copyright is utilized in a state to the
2 extent that printing or other publication
3 originates in the state. If a copyright is utilized
4 in more than one state, the extent to which it is
5 utilized in any one state shall be a fraction equal
6 to the gross receipts from sales or licenses of
7 materials printed or published in that state
8 divided by the total of such gross receipts for all
9 states in which the copyright is utilized.

10 (III) Trademarks and other items of intangible
11 personal property governed by this paragraph (B-1)
12 are utilized in the state in which the commercial
13 domicile of the licensee or purchaser is located.

14 (iii) If the state of utilization of an item of
15 property governed by this paragraph (B-1) cannot be
16 determined from the taxpayer's books and records or
17 from the books and records of any person related to the
18 taxpayer within the meaning of Section 267(b) of the
19 Internal Revenue Code, 26 U.S.C. 267, the gross
20 receipts attributable to that item shall be excluded
21 from both the numerator and the denominator of the
22 sales factor.

23 (B-2) Gross receipts from the license, sale, or other
24 disposition of patents, copyrights, trademarks, and
25 similar items of intangible personal property may be
26 included in the numerator or denominator of the sales
27 factor only if gross receipts from licenses, sales, or
28 other disposition of such items comprise more than 50% of
29 the taxpayer's total gross receipts included in gross
30 income during the tax year and during each of the 2
31 immediately preceding tax years; provided that, when a
32 taxpayer is a member of a unitary business group, such
33 determination shall be made on the basis of the gross
34 receipts of the entire unitary business group.

1 (C) For taxable years ending before December 31, 2004,
2 sales ~~Sales~~, other than sales governed by paragraphs (B),
3 ~~and~~ (B-1), and (B-2), are in this State if:

4 (i) The income-producing activity is performed in
5 this State; or

6 (ii) The income-producing activity is performed
7 both within and without this State and a greater
8 proportion of the income-producing activity is
9 performed within this State than without this State,
10 based on performance costs.

11 (C-5) For taxable years ending on or after December 31,
12 2004, sales, other than sales governed by paragraphs (B),
13 (B-1), and (B-2), are in this State if the purchaser is in
14 this State or the sale is otherwise attributable to this
15 State's marketplace. The following examples are
16 illustrative:

17 (i) Sales from the sale or lease of real property
18 are in this State if the property is located in this
19 State.

20 (ii) Sales from the lease or rental of tangible
21 personal property are in this State if the property is
22 located in this State during the rental period. Sales
23 from the lease or rental of tangible personal property
24 that is characteristically moving property, including,
25 but not limited to, motor vehicles, rolling stock,
26 aircraft, vessels, or mobile equipment are in this
27 State to the extent that the property is used in this
28 State.

29 (iii) Sales of intangible personal property are in
30 this State if the purchaser uses or realizes benefit
31 from the property in this State. If the purchaser uses
32 or realizes benefit from the the property both within
33 and without this State, the gross receipts from the
34 sale shall be divided among those states having

1 jurisdiction to tax the sale in proportion to the use
2 or benefit in each state. If the proportionate use or
3 benefit in this State cannot be determined, the sale
4 shall be excluded from both the numerator and the
5 denominator of the sales factor.

6 (iv) Sales of services are in this State if the
7 benefit of the service is enjoyed or realized in this
8 State. If the benefit of the service is enjoyed or
9 realized both within and without this State, the gross
10 receipts from the sale shall be divided among those
11 states having jurisdiction to tax the sale in
12 proportion to the benefit of service enjoyed or
13 realized in each state. If the proportionate benefit in
14 this State cannot be determined, the sale shall be
15 excluded from both the numerator and the denominator of
16 the sales factor. The Department may adopt rules
17 prescribing where the benefit of specific types of
18 service, including, but not limited to,
19 telecommunications, broadcast, cable, advertising,
20 publishing, and utility service, is enjoyed or
21 realized.

22 (D) For taxable years ending on or after December 31,
23 1995, the following items of income shall not be included
24 in the numerator or denominator of the sales factor:
25 dividends; amounts included under Section 78 of the
26 Internal Revenue Code; and Subpart F income as defined in
27 Section 952 of the Internal Revenue Code. No inference
28 shall be drawn from the enactment of this paragraph (D) in
29 construing this Section for taxable years ending before
30 December 31, 1995.

31 (E) Paragraphs (B-1) and (B-2) shall apply to tax years
32 ending on or after December 31, 1999, provided that a
33 taxpayer may elect to apply the provisions of these
34 paragraphs to prior tax years. Such election shall be made

1 in the form and manner prescribed by the Department, shall
2 be irrevocable, and shall apply to all tax years; provided
3 that, if a taxpayer's Illinois income tax liability for any
4 tax year, as assessed under Section 903 prior to January 1,
5 1999, was computed in a manner contrary to the provisions
6 of paragraphs (B-1) or (B-2), no refund shall be payable to
7 the taxpayer for that tax year to the extent such refund is
8 the result of applying the provisions of paragraph (B-1) or
9 (B-2) retroactively. In the case of a unitary business
10 group, such election shall apply to all members of such
11 group for every tax year such group is in existence, but
12 shall not apply to any taxpayer for any period during which
13 that taxpayer is not a member of such group.

14 (b) Insurance companies.

15 (1) In general. Except as otherwise provided by
16 paragraph (2), business income of an insurance company for
17 a taxable year shall be apportioned to this State by
18 multiplying such income by a fraction, the numerator of
19 which is the direct premiums written for insurance upon
20 property or risk in this State, and the denominator of
21 which is the direct premiums written for insurance upon
22 property or risk everywhere. For purposes of this
23 subsection, the term "direct premiums written" means the
24 total amount of direct premiums written, assessments and
25 annuity considerations, and surplus line contracts, but
26 excluding deposit-type funds, as reported for the taxable
27 year on the annual statement filed ~~by the company with the~~
28 ~~Illinois Director of Insurance~~ in the form approved by the
29 National Convention of Insurance Commissioners as filed by
30 the taxpayer with the Illinois Department of Insurance or,
31 if no report is filed with the Illinois Department of
32 Insurance, as filed by the taxpayer with its state of
33 domicile. If no such annual report is filed with any of the
34 United States for a particular year, "direct premiums

1 written" shall be determined by applying the instructions
2 to the Illinois annual report form for that year ~~or such~~
3 ~~other form as may be prescribed in lieu thereof.~~

4 (2) Reinsurance. If the principal source of premiums
5 written by an insurance company consists of premiums for
6 reinsurance accepted by it, the business income of such
7 company shall be apportioned to this State by multiplying
8 such income by a fraction, the numerator of which is the
9 sum of (i) direct premiums written for insurance upon
10 property or risk in this State, plus (ii) premiums written
11 for reinsurance accepted in respect of property or risk in
12 this State, and the denominator of which is the sum of
13 (iii) direct premiums written for insurance upon property
14 or risk everywhere, plus (iv) premiums written for
15 reinsurance accepted in respect of property or risk
16 everywhere. For taxable years ending before December 31,
17 2004, for purposes of this paragraph, premiums written for
18 reinsurance accepted in respect of property or risk in this
19 State, whether or not otherwise determinable, may, at the
20 election of the company, be determined on the basis of the
21 proportion which premiums written for reinsurance accepted
22 from companies commercially domiciled in Illinois bears to
23 premiums written for reinsurance accepted from all
24 sources, or, alternatively, in the proportion which the sum
25 of the direct premiums written for insurance upon property
26 or risk in this State by each ceding company from which
27 reinsurance is accepted bears to the sum of the total
28 direct premiums written by each such ceding company for the
29 taxable year.

30 (c) Financial organizations.

31 (1) In general. For taxable years ending before
32 December 31, 2004, business ~~Business~~ income of a financial
33 organization shall be apportioned to this State by
34 multiplying such income by a fraction, the numerator of

1 which is its business income from sources within this
2 State, and the denominator of which is its business income
3 from all sources. For the purposes of this subsection, the
4 business income of a financial organization from sources
5 within this State is the sum of the amounts referred to in
6 subparagraphs (A) through (E) following, but excluding the
7 adjusted income of an international banking facility as
8 determined in paragraph (2):

9 (A) Fees, commissions or other compensation for
10 financial services rendered within this State;

11 (B) Gross profits from trading in stocks, bonds or
12 other securities managed within this State;

13 (C) Dividends, and interest from Illinois
14 customers, which are received within this State;

15 (D) Interest charged to customers at places of
16 business maintained within this State for carrying
17 debit balances of margin accounts, without deduction
18 of any costs incurred in carrying such accounts; and

19 (E) Any other gross income resulting from the
20 operation as a financial organization within this
21 State. In computing the amounts referred to in
22 paragraphs (A) through (E) of this subsection, any
23 amount received by a member of an affiliated group
24 (determined under Section 1504(a) of the Internal
25 Revenue Code but without reference to whether any such
26 corporation is an "includible corporation" under
27 Section 1504(b) of the Internal Revenue Code) from
28 another member of such group shall be included only to
29 the extent such amount exceeds expenses of the
30 recipient directly related thereto.

31 (2) International Banking Facility. For taxable years
32 ending before December 31, 2004:

33 (A) Adjusted Income. The adjusted income of an
34 international banking facility is its income reduced

1 by the amount of the floor amount.

2 (B) Floor Amount. The floor amount shall be the
3 amount, if any, determined by multiplying the income of
4 the international banking facility by a fraction, not
5 greater than one, which is determined as follows:

6 (i) The numerator shall be:

7 The average aggregate, determined on a
8 quarterly basis, of the financial organization's
9 loans to banks in foreign countries, to foreign
10 domiciled borrowers (except where secured
11 primarily by real estate) and to foreign
12 governments and other foreign official
13 institutions, as reported for its branches,
14 agencies and offices within the state on its
15 "Consolidated Report of Condition", Schedule A,
16 Lines 2.c., 5.b., and 7.a., which was filed with
17 the Federal Deposit Insurance Corporation and
18 other regulatory authorities, for the year 1980,
19 minus

20 The average aggregate, determined on a
21 quarterly basis, of such loans (other than loans of
22 an international banking facility), as reported by
23 the financial institution for its branches,
24 agencies and offices within the state, on the
25 corresponding Schedule and lines of the
26 Consolidated Report of Condition for the current
27 taxable year, provided, however, that in no case
28 shall the amount determined in this clause (the
29 subtrahend) exceed the amount determined in the
30 preceding clause (the minuend); and

31 (ii) the denominator shall be the average
32 aggregate, determined on a quarterly basis, of the
33 international banking facility's loans to banks in
34 foreign countries, to foreign domiciled borrowers

1 (except where secured primarily by real estate)
2 and to foreign governments and other foreign
3 official institutions, which were recorded in its
4 financial accounts for the current taxable year.

5 (C) Change to Consolidated Report of Condition and
6 in Qualification. In the event the Consolidated Report
7 of Condition which is filed with the Federal Deposit
8 Insurance Corporation and other regulatory authorities
9 is altered so that the information required for
10 determining the floor amount is not found on Schedule
11 A, lines 2.c., 5.b. and 7.a., the financial institution
12 shall notify the Department and the Department may, by
13 regulations or otherwise, prescribe or authorize the
14 use of an alternative source for such information. The
15 financial institution shall also notify the Department
16 should its international banking facility fail to
17 qualify as such, in whole or in part, or should there
18 be any amendment or change to the Consolidated Report
19 of Condition, as originally filed, to the extent such
20 amendment or change alters the information used in
21 determining the floor amount.

22 (3) For taxable years ending on or after December 31,
23 2004, the business income of a financial organization shall
24 be apportioned to this State by multiplying such income by
25 a fraction, the numerator of which is its gross receipts
26 from sources in this State or otherwise attributable to
27 this State's marketplace and the denominator of which is
28 its gross receipts everywhere during the taxable year.
29 "Gross receipts" for purposes of this subparagraph (3)
30 means gross income, including net taxable gain on
31 disposition of assets, including securities and money
32 market instruments, when derived from transactions and
33 activities in the regular course of the financial
34 organization's trade or business. The following examples

1 are illustrative:

2 (i) Receipts from the lease or rental of real or
3 tangible personal property are in this State if the
4 property is located in this State during the rental
5 period. Receipts from the lease or rental of tangible
6 personal property that is characteristically moving
7 property, including, but not limited to, motor
8 vehicles, rolling stock, aircraft, vessels, or mobile
9 equipment are in this State to the extent that the
10 property is used in this State.

11 (ii) Interest income, commissions, fees, gains on
12 disposition, and other receipts from assets in the
13 nature of loans that are secured primarily by real
14 estate or tangible personal property are attributable
15 to this State's marketplace if the security is located
16 in this State.

17 (iii) Interest income, commissions, fees, gains on
18 disposition, and other receipts from consumer loans
19 that are not secured by real or tangible personal
20 property are in this State if the debtor is a resident of
21 this State.

22 (iv) Interest income, commissions, fees, gains on
23 disposition, and other receipts from commercial loans
24 and installment obligations that are not unsecured by
25 real or tangible personal property are in this State if
26 the proceeds of the loan are to be applied in this
27 State. If it cannot be determined where the funds are
28 to be applied, the income and receipts are attributable
29 to this State's marketplace if the office of the
30 borrower from which the loan was procured in the
31 regular course of business is located in this State. If
32 the location of this office cannot be determined, such
33 receipts shall be excluded from the numerator and
34 denominator of the sales factor.

1 (v) Interest income, fees, gains on disposition,
2 service charges, and other receipts from credit card
3 receivables are in this State if the card charges are
4 regularly billed to a customer in this State.

5 (vi) Receipts from the performance of fiduciary
6 and other services are in this State if the benefit of
7 the service is enjoyed or realized in this State. If
8 the benefit of the service is enjoyed or realized both
9 within and without this State, the gross receipts from
10 the sale shall be divided among those states having
11 jurisdiction to tax the sale in proportion to the
12 benefit of service enjoyed or realized in each state.
13 If the proportionate benefit in this State cannot be
14 determined, the sale shall be excluded from both the
15 numerator and the denominator of the gross receipts
16 factor.

17 (vii) Receipts from the issuance of travelers
18 checks and money orders are in this State if the checks
19 and money orders are issued from a location within this
20 State.

21 (viii) In the case of a financial organization that
22 accepts deposits, receipts from investments and from
23 money market instruments are apportioned to this State
24 based on the ratio that the total deposits of the
25 financial organization (including all members of the
26 financial organization's unitary group) from this
27 State, its residents, any business with an office or
28 other place of business in this State, and its
29 political subdivisions, agencies, and
30 instrumentalities bear to total deposits everywhere.
31 For purposes of this subdivision, deposits must be
32 attributed to this State under the preceding sentence,
33 whether or not the deposits are accepted or maintained
34 by the financial organization at locations within this

1 State. In the case of a financial organization that
2 does not accept deposits, receipts from investments in
3 securities and from money market instruments shall be
4 excluded from the numerator and the denominator of the
5 gross receipts factor.

6 (4) As used in subparagraph (3), "deposit" includes but
7 is not limited to:

8 (i) the unpaid balance of money or its equivalent
9 received or held by a financial institution in the
10 usual course of business and for which it has given or
11 is obligated to give credit, either conditionally or
12 unconditionally, to a commercial, checking, savings,
13 time, or thrift account whether or not advance notice
14 is required to withdraw the credited funds, or which is
15 evidenced by its certificate of deposit, thrift
16 certificate, investment certificate, or certificate of
17 indebtedness, or other similar name, or a check or
18 draft drawn against a deposit account and certified by
19 the financial organization, or a letter of credit or a
20 traveler's check on which the financial organization
21 is primarily liable. However, without limiting the
22 generality of the term "money or its equivalent", any
23 such account or instrument must be regarded as
24 evidencing the receipt of the equivalent of money when
25 credited or issued in exchange for checks or drafts or
26 for a promissory note upon which the person obtaining
27 the credit or instrument is primarily or secondarily
28 liable, or for a charge against a deposit account, or
29 in settlement of checks, drafts, or other instruments
30 forwarded to the bank for collection;

31 (ii) trust funds received or held by the financial
32 organization, whether held in the trust department or
33 held or deposited in any other department of the
34 financial organization;

1 (iii) money received or held by a financial
2 organization, or the credit given for money or its
3 equivalent received or held by a financial
4 organization, in the usual course of business for a
5 special or specific purpose, regardless of the legal
6 relationship so established. Under this paragraph,
7 "deposit" includes, but is not limited to, escrow
8 funds, funds held as security for an obligation due to
9 the financial organization or others, including funds
10 held as dealers reserves, or for securities loaned by
11 the financial organization, funds deposited by a
12 debtor to meet maturing obligations, funds deposited
13 as advance payment on subscriptions to United States
14 government securities, funds held for distribution or
15 purchase of securities, funds held to meet its
16 acceptances or letters of credit, and withheld taxes.
17 It does not include funds received by the financial
18 organization for immediate application to the
19 reduction of an indebtedness to the receiving
20 financial organization, or under condition that the
21 receipt of the funds immediately reduces or
22 extinguishes the indebtedness;

23 (iv) outstanding drafts, including advice of
24 another financial organization, cashier's checks,
25 money orders, or other officer's checks issued in the
26 usual course of business for any purpose, but not
27 including those issued in payment for services,
28 dividends, or purchases or other costs or expenses of
29 the financial organization itself; and

30 (v) money or its equivalent held as a credit
31 balance by a financial organization on behalf of its
32 customer if the entity is engaged in soliciting and
33 holding such balances in the regular course of its
34 business.

1 (5) As used in subparagraph (3), "money market
2 instruments" includes but is not limited to:

3 (i) Interest-bearing deposits, federal funds sold
4 and securities purchased under agreements to resell,
5 commercial paper, banker's acceptances, and purchased
6 certificates of deposit and similar instruments to the
7 extent that the instruments are reflected as assets
8 under generally accepted accounting principles.

9 "Securities" means United States Treasury
10 securities, obligations of United States government
11 agencies and corporations, obligations of state and
12 political subdivisions, corporate stock, bonds, and
13 other securities, participations in securities backed
14 by mortgages held by United States or state government
15 agencies, loan-backed securities and similar
16 investments to the extent the investments are
17 reflected as assets under generally accepted
18 accounting principles.

19 (ii) For purposes of subparagraph (3), "money
20 market instruments shall include investments in
21 investment partnerships, trusts, pools, funds,
22 investment companies, or any similar entity in
23 proportion to the investment of such entity in money
24 market instruments, and "securities" shall include
25 investments in investment partnerships, trusts, pools,
26 funds, investment companies, or any similar entity in
27 proportion to the investment of such entity in
28 securities.

29 (d) Transportation services. For taxable years ending
30 before December 31, 2004, business ~~Business~~ income derived from
31 furnishing transportation services shall be apportioned to
32 this State in accordance with paragraphs (1) and (2):

33 (1) Such business income (other than that derived from
34 transportation by pipeline) shall be apportioned to this

1 State by multiplying such income by a fraction, the
2 numerator of which is the revenue miles of the person in
3 this State, and the denominator of which is the revenue
4 miles of the person everywhere. For purposes of this
5 paragraph, a revenue mile is the transportation of 1
6 passenger or 1 net ton of freight the distance of 1 mile
7 for a consideration. Where a person is engaged in the
8 transportation of both passengers and freight, the
9 fraction above referred to shall be determined by means of
10 an average of the passenger revenue mile fraction and the
11 freight revenue mile fraction, weighted to reflect the
12 person's

13 (A) relative railway operating income from total
14 passenger and total freight service, as reported to the
15 Interstate Commerce Commission, in the case of
16 transportation by railroad, and

17 (B) relative gross receipts from passenger and
18 freight transportation, in case of transportation
19 other than by railroad.

20 (2) Such business income derived from transportation
21 by pipeline shall be apportioned to this State by
22 multiplying such income by a fraction, the numerator of
23 which is the revenue miles of the person in this State, and
24 the denominator of which is the revenue miles of the person
25 everywhere. For the purposes of this paragraph, a revenue
26 mile is the transportation by pipeline of 1 barrel of oil,
27 1,000 cubic feet of gas, or of any specified quantity of
28 any other substance, the distance of 1 mile for a
29 consideration.

30 (3) For taxable years ending on or after December 31,
31 2004, business income derived from providing
32 transportation services other than airline services shall
33 be apportioned to this State by using a fraction, (a) the
34 numerator of which shall be (i) all receipts from any

1 movement or shipment of people, goods, mail, oil, gas, or
2 any other substance that both originates and terminates in
3 this State, plus (ii) that portion of the person's gross
4 receipts from movements or shipments of people, goods,
5 mail, oil, gas, or any other substance passing through,
6 into, or out of this State, that is determined by the ratio
7 that the miles traveled in this State bears to total miles
8 from point of origin to point of destination and (b) the
9 denominator of which shall be all revenue derived from the
10 movement or shipment of people, goods, mail, oil, gas, or
11 any other substance. If a person derives business income
12 from activities other than the provision of transportation
13 services, only its business income from transportation
14 services shall be apportioned according to this
15 subsection.

16 (4) For taxable years ending on or after December 31,
17 2004, business income derived from providing airline
18 services shall be apportioned to this State by using a
19 fraction, (a) the numerator of which shall be all receipts
20 from any movement or shipment of people, goods, or mail,
21 multiplied by the ratio equal to arrivals of aircraft to
22 and departures from this State weighted as to cost of
23 aircraft by type divided by total arrivals and departures
24 of aircraft weighted as to cost of aircraft by type and (b)
25 the denominator of which shall be all revenue derived from
26 the movement or shipment of people, goods, or mail. If a
27 person derives business income from activities other than
28 the provision of airline services only, its business income
29 from airline services shall be apportioned according to
30 this subsection.

31 (e) Combined apportionment. Where 2 or more persons are
32 engaged in a unitary business as described in subsection
33 (a) (27) of Section 1501, a part of which is conducted in this
34 State by one or more members of the group, the business income

1 attributable to this State by any such member or members shall
2 be apportioned by means of the combined apportionment method.

3 (f) Alternative allocation. If the allocation and
4 apportionment provisions of subsections (a) through (e) and of
5 subsection (h) do not fairly represent the extent of a person's
6 business activity in this State, the person may petition for,
7 or the Director may, without a petition, permit or require, in
8 respect of all or any part of the person's business activity,
9 if reasonable:

10 (1) Separate accounting;

11 (2) The exclusion of any one or more factors;

12 (3) The inclusion of one or more additional factors
13 which will fairly represent the person's business
14 activities in this State; or

15 (4) The employment of any other method to effectuate an
16 equitable allocation and apportionment of the person's
17 business income.

18 (g) Cross reference. For allocation of business income by
19 residents, see Section 301(a).

20 (h) For tax years ending on or after December 31, 1998, the
21 apportionment factor of persons who apportion their business
22 income to this State under subsection (a) shall be equal to:

23 (1) for tax years ending on or after December 31, 1998
24 and before December 31, 1999, 16 2/3% of the property
25 factor plus 16 2/3% of the payroll factor plus 66 2/3% of
26 the sales factor;

27 (2) for tax years ending on or after December 31, 1999
28 and before December 31, 2000, 8 1/3% of the property factor
29 plus 8 1/3% of the payroll factor plus 83 1/3% of the sales
30 factor;

31 (3) for tax years ending on or after December 31, 2000,
32 the sales factor.

33 If, in any tax year ending on or after December 31, 1998 and
34 before December 31, 2000, the denominator of the payroll,

1 property, or sales factor is zero, the apportionment factor
2 computed in paragraph (1) or (2) of this subsection for that
3 year shall be divided by an amount equal to 100% minus the
4 percentage weight given to each factor whose denominator is
5 equal to zero.

6 (i) The changes made to this Section by this amendatory Act
7 of the 93rd General Assembly do not apply to any small business
8 person.

9 (Source: P.A. 90-562, eff. 12-16-97; 90-613, eff. 7-9-98;
10 91-541, eff. 8-13-99.)

11 (35 ILCS 5/305) (from Ch. 120, par. 3-305)

12 Sec. 305. Allocation of Partnership Income by partnerships
13 and partners other than residents. (a) Allocation of
14 partnership business income by partners other than residents.
15 The respective shares of partners other than residents in so
16 much of the business income of the partnership as is allocated
17 or apportioned to this State in the possession of the
18 partnership shall be taken into account by such partners pro
19 rata in accordance with their respective distributive shares of
20 such partnership income for the partnership's taxable year and
21 allocated to this State.

22 (b) Allocation of partnership nonbusiness income by
23 partners other than residents. The respective shares of
24 partners other than residents in the items of partnership
25 income and deduction not taken into account in computing the
26 business income of a partnership shall be taken into account by
27 such partners pro rata in accordance with their respective
28 distributive shares of such partnership income for the
29 partnership's taxable year, and allocated as if such items had
30 been paid, incurred or accrued directly to such partners in
31 their separate capacities.

32 (c) Allocation or apportionment of base income by
33 partnership. Base income of a partnership shall be allocated or

1 apportioned to this State pursuant to Article 3, in the same
2 manner as it is allocated or apportioned for any other
3 nonresident.

4 (c-5) Taxable income of an investment partnership, as
5 defined in Section 1501(a)(11.5) of this Act, that is
6 distributable to a nonresident partner shall be treated as
7 nonbusiness income and shall be allocated to the partner's
8 state of residence (in the case of an individual) or commercial
9 domicile (in the case of any other person). However, any income
10 distributable to a nonresident partner shall be treated as
11 business income and apportioned as if such income had been
12 received directly by the partner if the partner has made an
13 election under Section 1501(a)(1) of this Act to treat all
14 income as business income or if such income is from investment
15 activity:

16 (1) that is directly or integrally related to any other
17 business activity conducted in this State by the
18 nonresident partner (or any member of that partner's
19 unitary business group);

20 (2) that serves an operational function to any other
21 business activity of the nonresident partner (or any member
22 of that partner's unitary business group) in this State; or

23 (3) where assets of the investment partnership were
24 acquired with working capital from a trade or business
25 activity conducted in this State in which the nonresident
26 partner (or any member of that partner's unitary business
27 group) owns an interest.

28 (d) Cross reference. For allocation of partnership income
29 or deductions by residents, see Section 301(a).

30 (Source: P.A. 84-550.)

31 (35 ILCS 5/501) (from Ch. 120, par. 5-501)

32 Sec. 501. Notice or Regulations Requiring Records,
33 Statements and Special Returns.

1 (a) In general. Every person liable for any tax imposed by
2 this Act shall keep such records, render such statements, make
3 such returns and notices, and comply with such rules and
4 regulations as the Department may from time to time prescribe.
5 Whenever in the judgment of the Director it is necessary, he
6 may require any person, by notice served upon such person or by
7 regulations, to make such returns and notices, render such
8 statements, or keep such records, as the Director deems
9 sufficient to show whether or not such person is liable for tax
10 under this Act.

11 (b) Reportable transactions.

12 (1) Federal transactions. For each taxable year in which a
13 taxpayer is required to make a disclosure statement under
14 Treasury Regulations Section 1.6011-4 (26 CFR 1.6011-4)
15 (including any taxpayer that is a member of a consolidated
16 group required to make such disclosure) with respect to a
17 reportable transaction (including a listed transaction) in
18 which the taxpayer participated in a taxable year for which a
19 return is required under Section 502 of this Act, such taxpayer
20 shall file a copy of such disclosure with the Department.
21 Disclosure under this paragraph (1) is required to be made by
22 any taxpayer that is a member of a unitary business group that
23 includes any person required to make a disclosure statement
24 under Treasury Regulations Section 1.6011-4. Disclosure under
25 this paragraph (1) is required with respect to any transaction
26 entered into after February 28, 2000 that becomes a listed
27 transaction at any time and shall be made in the manner
28 prescribed by the Department. With respect to listed
29 transactions in which the taxpayer participated for taxable
30 years ending before December 31, 2004, disclosure shall be made
31 by the due date (including extensions) of the first return
32 required under Section 502 of this Act due after the effective
33 date of this Public Act of the 93rd General Assembly. With
34 respect to transactions in which the taxpayer participated for

1 taxable years ending on and after December 31, 2004, disclosure
2 shall be made at the time disclosure is required under Treasury
3 regulations (Section 1.6011-4).

4 (2) Illinois transactions. Any taxpayer that has
5 participated in an "Illinois reportable transaction" is
6 required to disclose such transaction on a return or statement
7 at the time, and in the form and manner prescribed by the
8 Department. Disclosure is required for each taxable year in
9 which the taxpayer participates in an Illinois reportable
10 transaction. If such reportable transaction results in a loss
11 which is carried back to a prior year, such disclosure must be
12 attached to the taxpayer's amended tax return for that prior
13 year.

14 (A) Definitions.

15 (i) Illinois reportable transaction. The term
16 "Illinois reportable transaction" means any
17 transaction of a type that the Department shall by
18 regulation determine as having a potential for
19 avoidance or evasion of the tax imposed by this Act,
20 including deductions, basis, credits, entity
21 classification, dividend elimination, or omission of
22 income. An Illinois reportable transaction includes
23 (but is not limited to) "Illinois listed transactions"
24 as defined in this subparagraph (A), "confidential
25 transactions" as defined under Treasury Regulations
26 Section 1.6011-4(b)(3) and "transactions with
27 contractual protection" as defined under Treasury
28 Regulations Section 1.6011-4(b)(4).

29 (ii) Illinois listed transactions. The term
30 "Illinois listed transaction" means a reportable
31 transaction that is the same as, or substantially
32 similar to, one of the types of reportable transactions
33 and that has been specifically identified by the
34 Department as a tax avoidance transaction.

1 (iii) Participated. For purposes of paragraph (2)
2 of this subsection (b), the term "participated" shall
3 be defined for each type of Illinois reportable
4 transaction in the regulation or other published
5 guidance identifying that type of reportable
6 transaction or listed transaction.

7 (B) The Department shall identify and publish Illinois
8 listed transactions through the use of Informational
9 Bulletins or other published guidance.

10 (c) Inconsistent return position. Pursuant to regulations
11 prescribed by the Department, any taxpayer that reports for any
12 taxable year any item for Illinois income tax purposes in a
13 manner inconsistent with the manner in which the same item is
14 reported or reflected on any return filed for the same taxable
15 year with another state with respect to a tax on or measured by
16 net income or with the manner in which a substantially
17 identical item was reported or reflected for Illinois income
18 tax purposes for the immediately preceding taxable year
19 (inconsistent return position), shall disclose such
20 inconsistent return position on a return or statement in the
21 form and manner prescribed by the Department. An inconsistent
22 return position shall include, but shall not be limited to, the
23 following:

24 (1) The reporting of the same item as business
25 income on the Illinois return and as nonbusiness income
26 on the return filed in another state, or as nonbusiness
27 income on the Illinois return and as business income on
28 the return filed in another state (except that an item
29 reported as business income in Illinois by virtue of
30 the election provided under Section 1501(a)(1) of this
31 Act shall not be deemed to give rise to an inconsistent
32 return position).

33 (2) The reporting of the same item of gross
34 receipts as attributable to another state on the

1 Illinois return and as attributable to Illinois on the
2 return filed in another state.

3 (3) The reporting of the same person as a member of
4 the taxpayer's unitary business on the Illinois return
5 and as not a member of the unitary business on the
6 return filed in another state or the reporting of the
7 same person as not a member of the taxpayer's unitary
8 business on the Illinois return and as a member of the
9 unitary business on the return filed in another state.

10 (Source: P.A. 76-261.)

11 (35 ILCS 5/502) (from Ch. 120, par. 5-502)

12 Sec. 502. Returns and notices.

13 (a) In general. A return with respect to the taxes imposed
14 by this Act shall be made by every person for any taxable year:

15 (1) for which such person is liable for a tax imposed
16 by this Act, or

17 (2) in the case of a resident or in the case of a
18 corporation which is qualified to do business in this
19 State, for which such person is required to make a federal
20 income tax return, regardless of whether such person is
21 liable for a tax imposed by this Act. However, this
22 paragraph shall not require a resident to make a return if
23 such person has an Illinois base income of the basic amount
24 in Section 204(b) or less and is either claimed as a
25 dependent on another person's tax return under the Internal
26 Revenue Code of 1986, or is claimed as a dependent on
27 another person's tax return under this Act.

28 Notwithstanding the provisions of paragraph (1), a
29 nonresident whose Illinois income tax liability under
30 subsections (a), (b), (c), and (d) of Section 201 of this Act
31 is paid in full after taking into account the credits allowed
32 under subsection (f) of this Section or allowed under Section
33 709.5 of this Act shall not be required to file a return under

1 this subsection (a).

2 (b) Fiduciaries and receivers.

3 (1) Decedents. If an individual is deceased, any return
4 or notice required of such individual under this Act shall
5 be made by his executor, administrator, or other person
6 charged with the property of such decedent.

7 (2) Individuals under a disability. If an individual is
8 unable to make a return or notice required under this Act,
9 the return or notice required of such individual shall be
10 made by his duly authorized agent, guardian, fiduciary or
11 other person charged with the care of the person or
12 property of such individual.

13 (3) Estates and trusts. Returns or notices required of
14 an estate or a trust shall be made by the fiduciary
15 thereof.

16 (4) Receivers, trustees and assignees for
17 corporations. In a case where a receiver, trustee in
18 bankruptcy, or assignee, by order of a court of competent
19 jurisdiction, by operation of law, or otherwise, has
20 possession of or holds title to all or substantially all
21 the property or business of a corporation, whether or not
22 such property or business is being operated, such receiver,
23 trustee, or assignee shall make the returns and notices
24 required of such corporation in the same manner and form as
25 corporations are required to make such returns and notices.

26 (c) Joint returns by husband and wife.

27 (1) Except as provided in paragraph (3), if a husband
28 and wife file a joint federal income tax return for a
29 taxable year they shall file a joint return under this Act
30 for such taxable year and their liabilities shall be joint
31 and several, but if the federal income tax liability of
32 either spouse is determined on a separate federal income
33 tax return, they shall file separate returns under this
34 Act.

1 (2) If neither spouse is required to file a federal
2 income tax return and either or both are required to file a
3 return under this Act, they may elect to file separate or
4 joint returns and pursuant to such election their
5 liabilities shall be separate or joint and several.

6 (3) If either husband or wife is a resident and the
7 other is a nonresident, they shall file separate returns in
8 this State on such forms as may be required by the
9 Department in which event their tax liabilities shall be
10 separate; but they may elect to determine their joint net
11 income and file a joint return as if both were residents
12 and in such case, their liabilities shall be joint and
13 several.

14 (4) Innocent spouses.

15 (A) However, for tax liabilities arising and paid
16 prior to August 13, 1999, an innocent spouse shall be
17 relieved of liability for tax (including interest and
18 penalties) for any taxable year for which a joint
19 return has been made, upon submission of proof that the
20 Internal Revenue Service has made a determination
21 under Section 6013(e) of the Internal Revenue Code, for
22 the same taxable year, which determination relieved
23 the spouse from liability for federal income taxes. If
24 there is no federal income tax liability at issue for
25 the same taxable year, the Department shall rely on the
26 provisions of Section 6013(e) to determine whether the
27 person requesting innocent spouse abatement of tax,
28 penalty, and interest is entitled to that relief.

29 (B) For tax liabilities arising on and after August
30 13, 1999 or which arose prior to that date, but remain
31 unpaid as of that date, if an individual who filed a
32 joint return for any taxable year has made an election
33 under this paragraph, the individual's liability for
34 any tax shown on the joint return shall not exceed the

1 individual's separate return amount and the
2 individual's liability for any deficiency assessed for
3 that taxable year shall not exceed the portion of the
4 deficiency properly allocable to the individual. For
5 purposes of this paragraph:

6 (i) An election properly made pursuant to
7 Section 6015 of the Internal Revenue Code shall
8 constitute an election under this paragraph,
9 provided that the election shall not be effective
10 until the individual has notified the Department
11 of the election in the form and manner prescribed
12 by the Department.

13 (ii) If no election has been made under Section
14 6015, the individual may make an election under
15 this paragraph in the form and manner prescribed by
16 the Department, provided that no election may be
17 made if the Department finds that assets were
18 transferred between individuals filing a joint
19 return as part of a scheme by such individuals to
20 avoid payment of Illinois income tax and the
21 election shall not eliminate the individual's
22 liability for any portion of a deficiency
23 attributable to an error on the return of which the
24 individual had actual knowledge as of the date of
25 filing.

26 (iii) In determining the separate return
27 amount or portion of any deficiency attributable
28 to an individual, the Department shall follow the
29 provisions in subsections (c) and (d) of Section
30 6015 of the Internal Revenue Code.

31 (iv) In determining the validity of an
32 individual's election under subparagraph (ii) and
33 in determining an electing individual's separate
34 return amount or portion of any deficiency under

1 subparagraph (iii), any determination made by the
2 Secretary of the Treasury, by the United States Tax
3 Court on petition for review of a determination by
4 the Secretary of the Treasury, or on appeal from
5 the United States Tax Court under Section 6015 of
6 the Internal Revenue Code regarding criteria for
7 eligibility or under subsection (d) of Section
8 6015 of the Internal Revenue Code regarding the
9 allocation of any item of income, deduction,
10 payment, or credit between an individual making
11 the federal election and that individual's spouse
12 shall be conclusively presumed to be correct. With
13 respect to any item that is not the subject of a
14 determination by the Secretary of the Treasury or
15 the federal courts, in any proceeding involving
16 this subsection, the individual making the
17 election shall have the burden of proof with
18 respect to any item except that the Department
19 shall have the burden of proof with respect to
20 items in subdivision (ii).

21 (v) Any election made by an individual under
22 this subsection shall apply to all years for which
23 that individual and the spouse named in the
24 election have filed a joint return.

25 (vi) After receiving a notice that the federal
26 election has been made or after receiving an
27 election under subdivision (ii), the Department
28 shall take no collection action against the
29 electing individual for any liability arising from
30 a joint return covered by the election until the
31 Department has notified the electing individual in
32 writing that the election is invalid or of the
33 portion of the liability the Department has
34 allocated to the electing individual. Within 60

1 days (150 days if the individual is outside the
2 United States) after the issuance of such
3 notification, the individual may file a written
4 protest of the denial of the election or of the
5 Department's determination of the liability
6 allocated to him or her and shall be granted a
7 hearing within the Department under the provisions
8 of Section 908. If a protest is filed, the
9 Department shall take no collection action against
10 the electing individual until the decision
11 regarding the protest has become final under
12 subsection (d) of Section 908 or, if
13 administrative review of the Department's decision
14 is requested under Section 1201, until the
15 decision of the court becomes final.

16 (d) Partnerships. Every partnership having any base income
17 allocable to this State in accordance with section 305(c) shall
18 retain information concerning all items of income, gain, loss
19 and deduction; the names and addresses of all of the partners,
20 or names and addresses of members of a limited liability
21 company, or other persons who would be entitled to share in the
22 base income of the partnership if distributed; the amount of
23 the distributive share of each; and such other pertinent
24 information as the Department may by forms or regulations
25 prescribe. The partnership shall make that information
26 available to the Department when requested by the Department.

27 (e) For taxable years ending on or after December 31, 1985,
28 and before December 31, 1993, taxpayers that are corporations
29 (other than Subchapter S corporations) having the same taxable
30 year and that are members of the same unitary business group
31 may elect to be treated as one taxpayer for purposes of any
32 original return, amended return which includes the same
33 taxpayers of the unitary group which joined in the election to
34 file the original return, extension, claim for refund,

1 assessment, collection and payment and determination of the
2 group's tax liability under this Act. This subsection (e) does
3 not permit the election to be made for some, but not all, of
4 the purposes enumerated above. For taxable years ending on or
5 after December 31, 1987, corporate members (other than
6 Subchapter S corporations) of the same unitary business group
7 making this subsection (e) election are not required to have
8 the same taxable year.

9 For taxable years ending on or after December 31, 1993,
10 taxpayers that are corporations (other than Subchapter S
11 corporations) and that are members of the same unitary business
12 group shall be treated as one taxpayer for purposes of any
13 original return, amended return which includes the same
14 taxpayers of the unitary group which joined in filing the
15 original return, extension, claim for refund, assessment,
16 collection and payment and determination of the group's tax
17 liability under this Act.

18 (f) The Department may promulgate regulations to permit
19 nonresident individual partners of the same partnership,
20 nonresident Subchapter S corporation shareholders of the same
21 Subchapter S corporation, and nonresident individuals
22 transacting an insurance business in Illinois under a Lloyds
23 plan of operation, and nonresident individual members of the
24 same limited liability company that is treated as a partnership
25 under Section 1501 (a)(16) of this Act, to file composite
26 individual income tax returns reflecting the composite income
27 of such individuals allocable to Illinois and to make composite
28 individual income tax payments. The Department may by
29 regulation also permit such composite returns to include the
30 income tax owed by Illinois residents attributable to their
31 income from partnerships, Subchapter S corporations, insurance
32 businesses organized under a Lloyds plan of operation, or
33 limited liability companies that are treated as partnership
34 under Section 1501(a)(16) of this Act, in which case such

1 Illinois residents will be permitted to claim credits on their
2 individual returns for their shares of the composite tax
3 payments. This paragraph of subsection (f) applies to taxable
4 years ending on or after December 31, 1987.

5 For taxable years ending on or after December 31, 1999, the
6 Department may, by regulation, also permit any persons
7 transacting an insurance business organized under a Lloyds plan
8 of operation to file composite returns reflecting the income of
9 such persons allocable to Illinois and the tax rates applicable
10 to such persons under Section 201 and to make composite tax
11 payments and shall, by regulation, also provide that the income
12 and apportionment factors attributable to the transaction of an
13 insurance business organized under a Lloyds plan of operation
14 by any person joining in the filing of a composite return
15 shall, for purposes of allocating and apportioning income under
16 Article 3 of this Act and computing net income under Section
17 202 of this Act, be excluded from any other income and
18 apportionment factors of that person or of any unitary business
19 group, as defined in subdivision (a)(27) of Section 1501, to
20 which that person may belong.

21 For taxable years ending on or after December 31, 2004,
22 every nonresident shall be allowed a credit against his or her
23 liability under subsections (a) and (b) of Section 201 for any
24 amount of tax reported on a composite return and paid on his or
25 her behalf under this subsection (f). Residents (other than
26 persons transacting an insurance business organized under a
27 Lloyds plan of operation) may claim a credit for taxes reported
28 on a composite return and paid on their behalf under this
29 subsection (f) only as permitted by the Department by rule.

30 (f-5) For taxable years ending on or after December 31,
31 2004, the Department may promulgate rules to provide that, when
32 a partnership or Subchapter S corporation has made an error in
33 determining the amount of any item of income, deduction,
34 addition, subtraction, or credit required to be reported on its

1 return that affects the liability imposed under this Act on a
2 partner or shareholder, the partnership or Subchapter S
3 corporation may report the changes in liabilities of its
4 partners or shareholders and claim a refund of the resulting
5 overpayments, or pay the resulting underpayments, on behalf of
6 its partners and shareholders.

7 (g) The Department may adopt rules to authorize the
8 electronic filing of any return required to be filed under this
9 Section.

10 (Source: P.A. 91-541, eff. 8-13-99; 91-913, eff. 1-1-01;
11 92-846, eff. 8-23-02.)

12 (35 ILCS 5/709.5 new)

13 Sec. 709.5. Withholding by partnerships, Subchapter S
14 corporations, and trusts.

15 (a) In general. For each taxable year ending on or after
16 December 31, 2004, every partnership (other than a publicly
17 traded partnership under Section 7704 of the Internal Revenue
18 Code), Subchapter S corporation, and trust who is not a small
19 business person must withhold from each nonresident partner,
20 shareholder, or beneficiary (other than a partner,
21 shareholder, or beneficiary included on a composite return
22 filed by the partnership or Subchapter S corporation for the
23 taxable year under subsection (f) of Section 502 of this Act)
24 an amount equal to the distributable share of the business
25 income apportionable to Illinois of that partner, shareholder,
26 or beneficiary under Sections 702 and 704 and Subchapter S of
27 the Internal Revenue Code, whether or not distributed,
28 multiplied by the applicable rates of tax for that partner or
29 shareholder under subsections (a) through (d) of Section 201 of
30 this Act.

31 (b) Credit for taxes withheld. Any amount withheld under
32 subsection (a) of this Section and paid to the Department shall
33 be treated as a payment of the estimated tax liability or of

1 the liability for withholding under this Section of the
2 partner, shareholder, or beneficiary to whom the income is
3 distributable for the taxable year in which that person
4 incurred a liability under this Act with respect to that
5 income.

6 (35 ILCS 5/711) (from Ch. 120, par. 7-711)

7 Sec. 711. Payor's Return and Payment of Tax Withheld. (a)
8 In general. Every payor required to deduct and withhold tax
9 under Section 710 ~~(and until January 1, 1989, Sections 708 and~~
10 ~~709)~~ shall be subject to the same reporting requirements
11 regarding taxes withheld and the same monthly and quarter
12 monthly (weekly) payment requirements as an employer subject to
13 the provisions of Section 701. For purposes of monthly and
14 quarter monthly (weekly) payments, the total tax withheld under
15 Sections 701, ~~708, 709~~ and 710 shall be considered in the
16 aggregate.

17 (a-5) Every partnership, Subchapter S corporation, or
18 trust required to withhold tax under Section 709.5 shall report
19 the amounts withheld and the partners, shareholders, or
20 beneficiaries from whom the amounts were withheld, and pay over
21 the amount withheld, no later than the due date (without regard
22 to extensions) of the tax return of the partnership, Subchapter
23 S corporation, or trust for the taxable year.

24 (b) Information statement. Every payor required to deduct
25 and withhold tax under Section 710 ~~(and until January 1, 1989,~~
26 ~~Sections 708 and 709)~~ shall furnish in duplicate to each party
27 entitled to the credit for such withholding under subsection
28 (b) of Section 709.5 ~~(c) of Section 708, subsection (c) of~~
29 ~~Section 709,~~ and subsection (b) of Section 710, respectively,
30 on or before January 31 of the succeeding calendar year for
31 amounts withheld under Section 710 or the due date (without
32 regard to extensions) of the return of the partnership,
33 Subchapter S corporation, or trust for the taxable year for

1 amounts withheld under Section 709.5 for the taxable year, a
2 written statement in such form as the Department may by
3 regulation prescribe showing the amount of the payments, the
4 amount deducted and withheld as tax, and such other information
5 as the Department may prescribe. A copy of such statement shall
6 be filed by the party entitled to the credit for the
7 withholding under subsection (b) of Section 709.5 ~~(c) of~~
8 ~~Section 708, subsection (c) of Section 709,~~ or subsection (b)
9 of Section 710 with his return for the taxable year to which it
10 relates.

11 (Source: P.A. 85-299; 85-982.)

12 (35 ILCS 5/712) (from Ch. 120, par. 7-712)

13 Sec. 712. Payor's Liability For Withheld Taxes. Every payor
14 who deducts and withholds or is required to deduct and withhold
15 tax under Sections 709.5 or Section 710 ~~(and until January 1,~~
16 ~~1989, Sections 708 and 709)~~ is liable for such tax. For
17 purposes of assessment and collection, any amount withheld or
18 required to be withheld and paid over to the Department, and
19 any penalties and interest with respect thereto, shall be
20 considered the tax of the payor. Any amount of tax actually
21 deducted and withheld under Sections 709.5 or Section 710 ~~(and~~
22 ~~until January 1, 1989, Sections 708 and 709)~~ shall be held to
23 be a special fund in trust for the Department. No payee shall
24 have any right of action against his payor in respect of any
25 money deducted and withheld and paid over to the Department in
26 compliance or in intended compliance with Sections and 709.5 or
27 ~~Section 710~~ (and until January 1, 1989, Sections 708 and 709).

28 (Source: P.A. 85-299; 85-982.)

29 (35 ILCS 5/713) (from Ch. 120, par. 7-713)

30 Sec. 713. Payor's Failure To Withhold. If a payor fails to
31 deduct and withhold any amount of tax as required under
32 Sections and 709.5 or Section 710 ~~(and until January 1, 1989,~~

1 ~~Sections 708 and 709~~ and thereafter the tax on account of
2 which such amount was required to be deducted and withheld is
3 paid, such amount of tax shall not be collected from the payor,
4 but the payor shall not be relieved from liability for
5 penalties or interest otherwise applicable in respect of such
6 failure to deduct and withhold. For purposes of this Section,
7 the tax on account of which an amount is required to be
8 deducted and withheld is the tax of the individual or
9 individuals who are entitled to a credit under subsection (b)
10 of Section 709.5 ~~(e) of Section 708, subsection (e) of Section~~
11 ~~709,~~ or subsection (b) of Section 710 for the withheld tax.

12 (Source: P.A. 85-299; 85-982.)

13 (35 ILCS 5/804) (from Ch. 120, par. 8-804)

14 Sec. 804. Failure to Pay Estimated Tax.

15 (a) In general. In case of any underpayment of estimated
16 tax by a taxpayer, except as provided in subsection (d) or (e),
17 the taxpayer shall be liable to a penalty in an amount
18 determined at the rate prescribed by Section 3-3 of the Uniform
19 Penalty and Interest Act upon the amount of the underpayment
20 (determined under subsection (b)) for each required
21 installment.

22 (b) Amount of underpayment. For purposes of subsection (a),
23 the amount of the underpayment shall be the excess of:

24 (1) the amount of the installment which would be
25 required to be paid under subsection (c), over

26 (2) the amount, if any, of the installment paid on or
27 before the last date prescribed for payment.

28 (c) Amount of Required Installments.

29 (1) Amount.

30 (A) In General. Except as provided in paragraph

31 (2), the amount of any required installment shall be
32 25% of the required annual payment.

33 (B) Required Annual Payment. For purposes of

1 subparagraph (A), the term "required annual payment"
2 means the lesser of

3 (i) 90% of the tax shown on the return for the
4 taxable year, or if no return is filed, 90% of the
5 tax for such year, or

6 (ii) 100% of the tax shown on the return of the
7 taxpayer for the preceding taxable year if a return
8 showing a liability for tax was filed by the
9 taxpayer for the preceding taxable year and such
10 preceding year was a taxable year of 12 months.

11 (2) Lower Required Installment where Annualized Income
12 Installment is Less Than Amount Determined Under Paragraph
13 (1).

14 (A) In General. In the case of any required
15 installment if a taxpayer establishes that the
16 annualized income installment is less than the amount
17 determined under paragraph (1),

18 (i) the amount of such required installment
19 shall be the annualized income installment, and

20 (ii) any reduction in a required installment
21 resulting from the application of this
22 subparagraph shall be recaptured by increasing the
23 amount of the next required installment determined
24 under paragraph (1) by the amount of such
25 reduction, and by increasing subsequent required
26 installments to the extent that the reduction has
27 not previously been recaptured under this clause.

28 (B) Determination of Annualized Income
29 Installment. In the case of any required installment,
30 the annualized income installment is the excess, if
31 any, of

32 (i) an amount equal to the applicable
33 percentage of the tax for the taxable year computed
34 by placing on an annualized basis the net income

1 for months in the taxable year ending before the
2 due date for the installment, over

3 (ii) the aggregate amount of any prior
4 required installments for the taxable year.

5 (C) Applicable Percentage.

6 In the case of the following The applicable
7 required installments: percentage is:

8 1st..... 22.5%

9 2nd..... 45%

10 3rd..... 67.5%

11 4th..... 90%

12 (D) Annualized Net Income; Individuals. For
13 individuals, net income shall be placed on an
14 annualized basis by:

15 (i) multiplying by 12, or in the case of a
16 taxable year of less than 12 months, by the number
17 of months in the taxable year, the net income
18 computed without regard to the standard exemption
19 for the months in the taxable year ending before
20 the month in which the installment is required to
21 be paid;

22 (ii) dividing the resulting amount by the
23 number of months in the taxable year ending before
24 the month in which such installment date falls; and

25 (iii) deducting from such amount the standard
26 exemption allowable for the taxable year, such
27 standard exemption being determined as of the last
28 date prescribed for payment of the installment.

29 (E) Annualized Net Income; Corporations. For
30 corporations, net income shall be placed on an
31 annualized basis by multiplying by 12 the taxable
32 income

33 (i) for the first 3 months of the taxable year,
34 in the case of the installment required to be paid

1 in the 4th month,

2 (ii) for the first 3 months or for the first 5
3 months of the taxable year, in the case of the
4 installment required to be paid in the 6th month,

5 (iii) for the first 6 months or for the first 8
6 months of the taxable year, in the case of the
7 installment required to be paid in the 9th month,
8 and

9 (iv) for the first 9 months or for the first 11
10 months of the taxable year, in the case of the
11 installment required to be paid in the 12th month
12 of the taxable year,

13 then dividing the resulting amount by the number of
14 months in the taxable year (3, 5, 6, 8, 9, or 11 as the
15 case may be).

16 (d) Exceptions. Notwithstanding the provisions of the
17 preceding subsections, the penalty imposed by subsection (a)
18 shall not be imposed if the taxpayer was not required to file
19 an Illinois income tax return for the preceding taxable year,
20 or, for individuals, if the taxpayer had no tax liability for
21 the preceding taxable year and such year was a taxable year of
22 12 months. The penalty imposed by subsection (a) shall also not
23 be imposed on any underpayments of estimated tax due before the
24 effective date of this amendatory Act of 1998 which
25 underpayments are solely attributable to the change in
26 apportionment from subsection (a) to subsection (h) of Section
27 304. The provisions of this amendatory Act of 1998 apply to tax
28 years ending on or after December 31, 1998.

29 (e) The penalty imposed for underpayment of estimated tax
30 by subsection (a) of this Section shall not be imposed to the
31 extent that the Director ~~Department~~ or his or her designate
32 determines, pursuant to Section 3-8 of the Uniform Penalty and
33 Interest Act that the penalty should not be imposed.

34 (f) Definition of tax. For purposes of subsections (b) and

1 (c), the term "tax" means the excess of the tax imposed under
2 Article 2 of this Act, over the amounts credited against such
3 tax under Sections 601(b) (3) and (4).

4 (g) Application of Section in case of tax withheld under
5 Article 7 on compensation. For purposes of applying this
6 Section :

7 (1) in the case of an individual, tax withheld from
8 compensation under Article 7 for the taxable year shall be
9 deemed a payment of estimated tax, and an equal part of
10 such amount shall be deemed paid on each installment date
11 for such taxable year, unless the taxpayer establishes the
12 dates on which all amounts were actually withheld, in which
13 case the amounts so withheld shall be deemed payments of
14 estimated tax on the dates on which such amounts were
15 actually withheld; ▽

16 (2) amounts timely paid by a partnership, Subchapter S
17 corporation, or trust on behalf of a partner, shareholder,
18 or beneficiary pursuant to subsection (f) of Section 502 or
19 Section 709.5 and claimed as a payment of estimated tax
20 shall be deemed a payment of estimated tax made on the last
21 day of the taxable year of the partnership, Subchapter S
22 corporation, or trust for which the income from the
23 withholding is made was computed; and

24 (3) all other amounts pursuant to Article 7 shall be
25 deemed a payment of estimated tax on the date the payment
26 is made to the taxpayer of the amount from which the tax is
27 withheld.

28 (g-5) Amounts withheld under the State Salary and Annuity
29 Withholding Act. An individual who has amounts withheld under
30 paragraph (10) of Section 4 of the State Salary and Annuity
31 Withholding Act may elect to have those amounts treated as
32 payments of estimated tax made on the dates on which those
33 amounts are actually withheld.

34 (i) Short taxable year. The application of this Section to

1 taxable years of less than 12 months shall be in accordance
2 with regulations prescribed by the Department.

3 The changes in this Section made by Public Act 84-127 shall
4 apply to taxable years ending on or after January 1, 1986.

5 (Source: P.A. 90-448, eff. 8-16-97; 90-613, eff. 7-9-98.)

6 (35 ILCS 5/905) (from Ch. 120, par. 9-905)

7 Sec. 905. Limitations on Notices of Deficiency.

8 (a) In general. Except as otherwise provided in this Act:

9 (1) A notice of deficiency shall be issued not later
10 than 3 years after the date the return was filed, and

11 (2) No deficiency shall be assessed or collected with
12 respect to the year for which the return was filed unless
13 such notice is issued within such period.

14 (b) Substantial omission of items.

15 (1) Omission of more than 25% of income. If the
16 taxpayer omits from base income an amount properly
17 includible therein which is in excess of 25% of the amount
18 of base income stated in the return, a notice of deficiency
19 may be issued not later than 6 years after the return was
20 filed. For purposes of this paragraph, there shall not be
21 taken into account any amount which is omitted in the
22 return if such amount is disclosed in the return, or in a
23 statement attached to the return, in a manner adequate to
24 apprise the Department of the nature and the amount of such
25 item.

26 (2) Reportable transactions. If a taxpayer fails to
27 include on any return or statement for any taxable year any
28 information with respect to a reportable transaction or
29 Illinois reportable transaction, as required under Section
30 501(b) of this Act, or fails to disclose an inconsistent
31 return position, as required under Section 501(c) of this
32 Act, a notice of deficiency may be issued not later than 6
33 years after the return is filed with respect to the taxable

1 year in which the taxpayer participated in the reportable
2 transaction or was required to disclose an inconsistent
3 return position.

4 (c) No return or fraudulent return. If no return is filed
5 or a false and fraudulent return is filed with intent to evade
6 the tax imposed by this Act, a notice of deficiency may be
7 issued at any time.

8 (d) Failure to report federal change. If a taxpayer fails
9 to notify the Department in any case where notification is
10 required by Section 304(c) or 506(b), or fails to report a
11 change or correction which is treated in the same manner as if
12 it were a deficiency for federal income tax purposes, a notice
13 of deficiency may be issued (i) at any time or (ii) on or after
14 August 13, 1999, at any time for the taxable year for which the
15 notification is required or for any taxable year to which the
16 taxpayer may carry an Article 2 credit, or a Section 207 loss,
17 earned, incurred, or used in the year for which the
18 notification is required; provided, however, that the amount of
19 any proposed assessment set forth in the notice shall be
20 limited to the amount of any deficiency resulting under this
21 Act from the recomputation of the taxpayer's net income,
22 Article 2 credits, or Section 207 loss earned, incurred, or
23 used in the taxable year for which the notification is required
24 after giving effect to the item or items required to be
25 reported.

26 (e) Report of federal change.

27 (1) Before August 13, 1999, in any case where
28 notification of an alteration is given as required by
29 Section 506(b), a notice of deficiency may be issued at any
30 time within 2 years after the date such notification is
31 given, provided, however, that the amount of any proposed
32 assessment set forth in such notice shall be limited to the
33 amount of any deficiency resulting under this Act from
34 recomputation of the taxpayer's net income, net loss, or

1 Article 2 credits for the taxable year after giving effect
2 to the item or items reflected in the reported alteration.

3 (2) On and after August 13, 1999, in any case where
4 notification of an alteration is given as required by
5 Section 506(b), a notice of deficiency may be issued at any
6 time within 2 years after the date such notification is
7 given for the taxable year for which the notification is
8 given or for any taxable year to which the taxpayer may
9 carry an Article 2 credit, or a Section 207 loss, earned,
10 incurred, or used in the year for which the notification is
11 given, provided, however, that the amount of any proposed
12 assessment set forth in such notice shall be limited to the
13 amount of any deficiency resulting under this Act from
14 recomputation of the taxpayer's net income, Article 2
15 credits, or Section 207 loss earned, incurred, or used in
16 the taxable year for which the notification is given after
17 giving effect to the item or items reflected in the
18 reported alteration.

19 (f) Extension by agreement. Where, before the expiration of
20 the time prescribed in this Section for the issuance of a
21 notice of deficiency, both the Department and the taxpayer
22 shall have consented in writing to its issuance after such
23 time, such notice may be issued at any time prior to the
24 expiration of the period agreed upon. In the case of a taxpayer
25 who is a partnership, Subchapter S corporation, or trust and
26 who enters into an agreement with the Department pursuant to
27 this subsection on or after January 1, 2003, a notice of
28 deficiency may be issued to the partners, shareholders, or
29 beneficiaries of the taxpayer at any time prior to the
30 expiration of the period agreed upon. Any proposed assessment
31 set forth in the notice, however, shall be limited to the
32 amount of any deficiency resulting under this Act from
33 recomputation of items of income, deduction, credits, or other
34 amounts of the taxpayer that are taken into account by the

1 partner, shareholder, or beneficiary in computing its
2 liability under this Act. The period so agreed upon may be
3 extended by subsequent agreements in writing made before the
4 expiration of the period previously agreed upon.

5 (g) Erroneous refunds. In any case in which there has been
6 an erroneous refund of tax payable under this Act, a notice of
7 deficiency may be issued at any time within 2 years from the
8 making of such refund, or within 5 years from the making of
9 such refund if it appears that any part of the refund was
10 induced by fraud or the misrepresentation of a material fact,
11 provided, however, that the amount of any proposed assessment
12 set forth in such notice shall be limited to the amount of such
13 erroneous refund.

14 Beginning July 1, 1993, in any case in which there has been
15 a refund of tax payable under this Act attributable to a net
16 loss carryback as provided for in Section 207, and that refund
17 is subsequently determined to be an erroneous refund due to a
18 reduction in the amount of the net loss which was originally
19 carried back, a notice of deficiency for the erroneous refund
20 amount may be issued at any time during the same time period in
21 which a notice of deficiency can be issued on the loss year
22 creating the carryback amount and subsequent erroneous refund.
23 The amount of any proposed assessment set forth in the notice
24 shall be limited to the amount of such erroneous refund.

25 (h) Time return deemed filed. For purposes of this Section
26 a tax return filed before the last day prescribed by law
27 (including any extension thereof) shall be deemed to have been
28 filed on such last day.

29 (i) Request for prompt determination of liability. For
30 purposes of subsection (a)(1), in the case of a tax return
31 required under this Act in respect of a decedent, or by his
32 estate during the period of administration, or by a
33 corporation, the period referred to in such Subsection shall be
34 18 months after a written request for prompt determination of

1 liability is filed with the Department (at such time and in
2 such form and manner as the Department shall by regulations
3 prescribe) by the executor, administrator, or other fiduciary
4 representing the estate of such decedent, or by such
5 corporation, but not more than 3 years after the date the
6 return was filed. This subsection shall not apply in the case
7 of a corporation unless:

8 (1) (A) such written request notifies the Department
9 that the corporation contemplates dissolution at or before
10 the expiration of such 18-month period, (B) the dissolution
11 is begun in good faith before the expiration of such
12 18-month period, and (C) the dissolution is completed;

13 (2) (A) such written request notifies the Department
14 that a dissolution has in good faith been begun, and (B)
15 the dissolution is completed; or

16 (3) a dissolution has been completed at the time such
17 written request is made.

18 (j) Withholding tax. In the case of returns required under
19 Article 7 of this Act (with respect to any amounts withheld as
20 tax or any amounts required to have been withheld as tax) a
21 notice of deficiency shall be issued not later than 3 years
22 after the 15th day of the 4th month following the close of the
23 calendar year in which such withholding was required.

24 (k) Penalties for failure to make information reports. A
25 notice of deficiency for the penalties provided by Subsection
26 1405.1(c) of this Act may not be issued more than 3 years after
27 the due date of the reports with respect to which the penalties
28 are asserted.

29 (l) Penalty for failure to file withholding returns. A
30 notice of deficiency for penalties provided by Section 1004 of
31 this Act for taxpayer's failure to file withholding returns may
32 not be issued more than three years after the 15th day of the
33 4th month following the close of the calendar year in which the
34 withholding giving rise to taxpayer's obligation to file those

1 returns occurred.

2 (m) Transferee liability. A notice of deficiency may be
3 issued to a transferee relative to a liability asserted under
4 Section 1405 during time periods defined as follows:

5 1) Initial Transferee. In the case of the liability of
6 an initial transferee, up to 2 years after the expiration
7 of the period of limitation for assessment against the
8 transferor, except that if a court proceeding for review of
9 the assessment against the transferor has begun, then up to
10 2 years after the return of the certified copy of the
11 judgment in the court proceeding.

12 2) Transferee of Transferee. In the case of the
13 liability of a transferee, up to 2 years after the
14 expiration of the period of limitation for assessment
15 against the preceding transferee, but not more than 3 years
16 after the expiration of the period of limitation for
17 assessment against the initial transferor; except that if,
18 before the expiration of the period of limitation for the
19 assessment of the liability of the transferee, a court
20 proceeding for the collection of the tax or liability in
21 respect thereof has been begun against the initial
22 transferor or the last preceding transferee, as the case
23 may be, then the period of limitation for assessment of the
24 liability of the transferee shall expire 2 years after the
25 return of the certified copy of the judgment in the court
26 proceeding.

27 (n) Notice of decrease in net loss. On and after the
28 effective date of this amendatory Act of the 92nd General
29 Assembly, no notice of deficiency shall be issued as the result
30 of a decrease determined by the Department in the net loss
31 incurred by a taxpayer under Section 207 of this Act unless the
32 Department has notified the taxpayer of the proposed decrease
33 within 3 years after the return reporting the loss was filed or
34 within one year after an amended return reporting an increase

1 in the loss was filed, provided that in the case of an amended
2 return, a decrease proposed by the Department more than 3 years
3 after the original return was filed may not exceed the increase
4 claimed by the taxpayer on the original return.

5 (Source: P.A. 91-541, eff. 8-13-99; 92-846, eff. 8-23-02.)

6 (35 ILCS 5/911) (from Ch. 120, par. 9-911)

7 Sec. 911. Limitations on Claims for Refund.

8 (a) In general. Except as otherwise provided in this Act:

9 (1) A claim for refund shall be filed not later than 3
10 years after the date the return was filed (in the case of
11 returns required under Article 7 of this Act respecting any
12 amounts withheld as tax, not later than 3 years after the
13 15th day of the 4th month following the close of the
14 calendar year in which such withholding was made), or one
15 year after the date the tax was paid, whichever is the
16 later; and

17 (2) No credit or refund shall be allowed or made with
18 respect to the year for which the claim was filed unless
19 such claim is filed within such period.

20 (b) Federal changes.

21 (1) In general. In any case where notification of an
22 alteration is required by Section 506(b), a claim for
23 refund may be filed within 2 years after the date on which
24 such notification was due (regardless of whether such
25 notice was given), but the amount recoverable pursuant to a
26 claim filed under this Section shall be limited to the
27 amount of any overpayment resulting under this Act from
28 recomputation of the taxpayer's net income, net loss, or
29 Article 2 credits for the taxable year after giving effect
30 to the item or items reflected in the alteration required
31 to be reported.

32 (2) Tentative carryback adjustments paid before
33 January 1, 1974. If, as the result of the payment before

1 January 1, 1974 of a federal tentative carryback
2 adjustment, a notification of an alteration is required
3 under Section 506(b), a claim for refund may be filed at
4 any time before January 1, 1976, but the amount recoverable
5 pursuant to a claim filed under this Section shall be
6 limited to the amount of any overpayment resulting under
7 this Act from recomputation of the taxpayer's base income
8 for the taxable year after giving effect to the federal
9 alteration resulting from the tentative carryback
10 adjustment irrespective of any limitation imposed in
11 paragraph (1) of this subsection.

12 (c) Extension by agreement. Where, before the expiration of
13 the time prescribed in this section for the filing of a claim
14 for refund, both the Department and the claimant shall have
15 consented in writing to its filing after such time, such claim
16 may be filed at any time prior to the expiration of the period
17 agreed upon. The period so agreed upon may be extended by
18 subsequent agreements in writing made before the expiration of
19 the period previously agreed upon. In the case of a taxpayer
20 who is a partnership, Subchapter S corporation, or trust and
21 who enters into an agreement with the Department pursuant to
22 this subsection on or after January 1, 2003, a claim for refund
23 may be issued to the partners, shareholders, or beneficiaries
24 of the taxpayer at any time prior to the expiration of the
25 period agreed upon. Any refund allowed pursuant to the claim,
26 however, shall be limited to the amount of any overpayment of
27 tax due under this Act that results from recomputation of items
28 of income, deduction, credits, or other amounts of the taxpayer
29 that are taken into account by the partner, shareholder, or
30 beneficiary in computing its liability under this Act.

31 (d) Limit on amount of credit or refund.

32 (1) Limit where claim filed within 3-year period. If
33 the claim was filed by the claimant during the 3-year
34 period prescribed in subsection (a), the amount of the

1 credit or refund shall not exceed the portion of the tax
2 paid within the period, immediately preceding the filing of
3 the claim, equal to 3 years plus the period of any
4 extension of time for filing the return.

5 (2) Limit where claim not filed within 3-year period.
6 If the claim was not filed within such 3-year period, the
7 amount of the credit or refund shall not exceed the portion
8 of the tax paid during the one year immediately preceding
9 the filing of the claim.

10 (e) Time return deemed filed. For purposes of this section
11 a tax return filed before the last day prescribed by law for
12 the filing of such return (including any extensions thereof)
13 shall be deemed to have been filed on such last day.

14 (f) No claim for refund based on the taxpayer's taking a
15 credit for estimated tax payments as provided by Section
16 601(b)(2) or for any amount paid by a taxpayer pursuant to
17 Section 602(a) or for any amount of credit for tax withheld
18 pursuant to Article 7 ~~Section 701~~ may be filed more than 3
19 years after the due date, as provided by Section 505, of the
20 return which was required to be filed relative to the taxable
21 year for which the payments were made or for which the tax was
22 withheld. The changes in this subsection (f) made by this
23 amendatory Act of 1987 shall apply to all taxable years ending
24 on or after December 31, 1969.

25 (g) Special Period of Limitation with Respect to Net Loss
26 Carrybacks. If the claim for refund relates to an overpayment
27 attributable to a net loss carryback as provided by Section
28 207, in lieu of the 3 year period of limitation prescribed in
29 subsection (a), the period shall be that period which ends 3
30 years after the time prescribed by law for filing the return
31 (including extensions thereof) for the taxable year of the net
32 loss which results in such carryback (or, on and after August
33 13, 1999, with respect to a change in the carryover of an
34 Article 2 credit to a taxable year resulting from the carryback

1 of a Section 207 loss incurred in a taxable year beginning on
2 or after January 1, 2000, the period shall be that period that
3 ends 3 years after the time prescribed by law for filing the
4 return (including extensions of that time) for that subsequent
5 taxable year), or the period prescribed in subsection (c) in
6 respect of such taxable year, whichever expires later. In the
7 case of such a claim, the amount of the refund may exceed the
8 portion of the tax paid within the period provided in
9 subsection (d) to the extent of the amount of the overpayment
10 attributable to such carryback. On and after August 13, 1999,
11 if the claim for refund relates to an overpayment attributable
12 to the carryover of an Article 2 credit, or of a Section 207
13 loss, earned, incurred (in a taxable year beginning on or after
14 January 1, 2000), or used in a year for which a notification of
15 a change affecting federal taxable income must be filed under
16 subsection (b) of Section 506, the claim may be filed within
17 the period prescribed in paragraph (1) of subsection (b) in
18 respect of the year for which the notification is required. In
19 the case of such a claim, the amount of the refund may exceed
20 the portion of the tax paid within the period provided in
21 subsection (d) to the extent of the amount of the overpayment
22 attributable to the recomputation of the taxpayer's Article 2
23 credits, or Section 207 loss, earned, incurred, or used in the
24 taxable year for which the notification is given.

25 (h) Claim for refund based on net loss. On and after the
26 effective date of this amendatory Act of the 92nd General
27 Assembly, no claim for refund shall be allowed to the extent
28 the refund is the result of an amount of net loss incurred
29 under Section 207 of this Act that was not reported to the
30 Department within 3 years of the due date (including
31 extensions) of the return for the loss year on either the
32 original return filed by the taxpayer or on amended return.

33 (Source: P.A. 91-541, eff. 8-13-99; 92-846, eff. 8-23-02.)

1 (35 ILCS 5/1001) (from Ch. 120, par. 10-1001)

2 Sec. 1001. Failure to File Tax Returns.

3 (a) In case of failure to file any tax return required
4 under this Act on the date prescribed therefor, (determined
5 with regard to any extensions of time for filing) there shall
6 be added as a penalty the amount prescribed by Section 3-3 of
7 the Uniform Penalty and Interest Act.

8 (b) Failure to disclose reportable transaction. Any
9 taxpayer who fails to comply with the requirements of Section
10 501(b)(1) of this Act or who fails to include on a return or
11 statement any information with respect to an Illinois
12 reportable transaction required under Section 501(b)(2) of
13 this Act and regulations promulgated thereunder to be included
14 with that return or statement shall pay a penalty in the amount
15 determined under this subsection. Such penalty shall be deemed
16 assessed upon the date of filing of the return for the taxable
17 year in which the taxpayer participates in the reportable
18 transaction. A taxpayer shall not be considered to have
19 complied with the requirements of Section 501(b)(1) of this Act
20 unless the disclosure statement filed with the Department
21 includes all of the information required to be disclosed with
22 respect to a reportable transaction pursuant to Treasury
23 Regulations Section 1.6011-4 (26 CFR 1.6011-4) and regulations
24 promulgated by the Department under Section 501(b)(1) of this
25 Act. A taxpayer shall not be considered to have complied with
26 the requirements of Section 501(b)(2) of this Act unless the
27 disclosure required under such Section includes all of the
28 information required to be disclosed under regulations
29 promulgated by the Department pursuant to such Section.

30 (1) Amount of penalty. Except as provided in paragraph (2),
31 the amount of the penalty under this subsection shall be
32 \$15,000 for each failure to comply with the requirements of
33 Section 501(b)(1) or Section 501(b)(2).

34 (2) Increase in penalty for listed transactions. In the

1 case of a failure to comply with the requirements of Section
2 501(b)(1) with respect to a "listed transaction", or in the
3 case of failure to properly disclose participation an Illinois
4 listed transaction as defined under Section 501(b)(2) of this
5 Act, the penalty under this subsection shall be \$30,000 for
6 each failure.

7 (3) Authority to Rescind Penalty. The Board of Appeals may
8 rescind all or any portion of any penalty imposed by this
9 subsection with respect to any violation, if all of the
10 following apply:

11 (A) The violation is with respect to a reportable
12 transaction or Illinois reportable transaction other than
13 a listed transaction or Illinois listed transaction;

14 (B) The person on whom the penalty is imposed has a
15 history of complying with the requirements of this Act;

16 (C) It is shown that the violation is due to an
17 unintentional mistake of fact;

18 (D) Imposing the penalty would be against equity and
19 good conscience; and

20 (E) Rescinding the penalty would promote compliance
21 with the requirements of this Act and effective tax
22 administration.

23 The exercise of authority under this subparagraph (3) shall
24 be at the sole discretion of the Board of Appeals and the
25 Director. Notwithstanding any other law or rule of law, any
26 determination under this subparagraph (3) may not be reviewed
27 in any administrative or judicial proceeding.

28 (4) Coordination with other penalties. The penalty imposed
29 by this subsection is in addition to any penalty imposed by
30 this Act or the Uniform Penalty and Interest Act.

31 (c) Penalty for failure to disclose inconsistent return
32 position. Any taxpayer that fails to properly disclose an
33 inconsistent return position with respect to any taxable year,
34 as required under Section 501(c) of this Act, shall incur a

1 penalty of \$15,000 for each position not reported. Such penalty
2 shall be deemed assessed upon the date of filing of the return
3 for the taxable year with respect to which the taxpayer was
4 required to disclose the inconsistent return position. The
5 penalty imposed by this subsection is in addition to any
6 penalty imposed by this Act or the Uniform Penalty and Interest
7 Act. The Board of Appeals may rescind all or any portion of the
8 penalty imposed under this subsection (c) if it is shown that
9 there was a reasonable cause for the failure to disclose and
10 that the taxpayer acted in good faith.

11 (d) The total penalty imposed under subsection (b) or
12 subsection (c) of this Section with respect to any taxable year
13 shall not exceed 10% of the increase in net income (or
14 reduction in Illinois net loss under Section 207 of this Act)
15 that would result had the taxpayer not participated in any
16 reportable transaction or Illinois reportable transaction
17 affecting its net income for such taxable year and reported
18 each inconsistent return position in a manner that would cause
19 it to report the greatest net income (or smallest Illinois net
20 loss) on its Illinois income tax return for the taxable year.

21 (Source: P.A. 87-205.)

22 (35 ILCS 5/1002) (from Ch. 120, par. 10-1002)

23 Sec. 1002. Failure to Pay Tax.

24 (a) Negligence. If any part of a deficiency is due to
25 negligence or intentional disregard of rules and regulations
26 (but without intent to defraud) there shall be added to the tax
27 as a penalty the amount prescribed by Section 3-5 of the
28 Uniform Penalty and Interest Act.

29 (b) Fraud. If any part of a deficiency is due to fraud,
30 there shall be added to the tax as a penalty the amount
31 prescribed by Section 3-6 of the Uniform Penalty and Interest
32 Act.

33 (c) Nonwillful failure to pay withholding tax. If any

1 employer, without intent to evade or defeat any tax imposed by
2 this Act or the payment thereof, shall fail to make a return
3 and pay a tax withheld by him at the time required by or under
4 the provisions of this Act, such employer shall be liable for
5 such taxes and shall pay the same together with the interest
6 and the penalty provided by Sections 3-2 and 3-3, respectively,
7 of the Uniform Penalty and Interest Act and such interest and
8 penalty shall not be charged to or collected from the employee
9 by the employer.

10 (d) Willful failure to collect and pay over tax. Any person
11 required to collect, truthfully account for, and pay over the
12 tax imposed by this Act who willfully fails to collect such tax
13 or truthfully account for and pay over such tax or willfully
14 attempts in any manner to evade or defeat the tax or the
15 payment thereof, shall, in addition to other penalties provided
16 by law, be liable for the penalty imposed by Section 3-7 of the
17 Uniform Penalty and Interest Act.

18 (e) Penalties assessable.

19 (1) In general. Except as otherwise provided in this
20 Act ~~provided in paragraphs (2), (3) and (4)~~, the penalties
21 provided by this Act shall be paid upon notice and demand
22 and shall be assessed, collected, and paid in the same
23 manner as taxes and any reference in this Act to the tax
24 imposed by this Act shall be deemed also to refer to
25 penalties provided by this Act.

26 (2) Procedure for assessing certain penalties. For the
27 purposes of Article 9 any penalty under Section 804(a) or
28 Section 1001 shall be deemed assessed upon the filing of
29 the return for the taxable year.

30 (3) Procedure for assessing the penalty for failure to
31 file withholding returns or annual transmittal forms for
32 wage and tax statements. The penalty imposed by Section
33 1004 will be asserted by the Department's issuance of a
34 notice of deficiency. If taxpayer files a timely protest,

1 the procedures of Section 908 will be followed. If taxpayer
2 does not file a timely protest, the notice of deficiency
3 will constitute an assessment pursuant to subsection (c) of
4 Section 904.

5 (4) Assessment of penalty under Section 1005(a). The
6 penalty imposed under Section 1005(a) shall be deemed
7 assessed upon the assessment of the tax to which such
8 penalty relates and shall be collected and paid on notice
9 and demand in the same manner as the tax.

10 (f) Determination of deficiency. For purposes of
11 subsections (a) and (b), the amount shown as the tax by the
12 taxpayer upon his return shall be taken into account in
13 determining the amount of the deficiency only if such return
14 was filed on or before the last day prescribed by law for the
15 filing of such return, including any extensions of the time for
16 such filing.

17 (Source: P.A. 89-379, eff. 1-1-96.)

18 (35 ILCS 5/1005) (from Ch. 120, par. 10-1005)

19 Sec. 1005. Penalty for Underpayment of Tax.

20 (a) In general. If any amount of tax required to be shown
21 on a return prescribed by this Act is not paid on or before the
22 date required for filing such return (determined without regard
23 to any extension of time to file), a penalty shall be imposed
24 in the manner and at the rate prescribed by the Uniform Penalty
25 and Interest Act. The provisions of this subsection shall apply
26 to all taxable years ending on or after January 1, 1986.

27 (b) Reportable transaction penalty. If a taxpayer has a
28 reportable transaction understatement for any taxable year,
29 there shall be added to the tax an amount equal to 20% of the
30 amount of that understatement. Such penalty shall be deemed
31 assessed upon the assessment of the tax to which such penalty
32 relates and shall be collected and paid on notice and demand in
33 the same manner as the tax.

1 (1) Reportable Transaction Understatement. For
2 purposes of this Section, the term "reportable transaction
3 understatement" means the sum of subparagraphs (A) and (B):

4 (A) The product of (i) the amount of the increase
5 (if any) in Illinois net income (or decrease in
6 Illinois net loss under Section 207 of this Act) that
7 results from a difference between the proper tax
8 treatment of an item to which this subsection applies
9 and the taxpayer's treatment of that item (as shown on
10 the taxpayer's return of tax), and (ii) the applicable
11 tax rates under Section 201 of this Act.

12 (B) The amount of the decrease (if any) in the
13 aggregate amount of credits determined under this Act
14 (including credits that may be carried forward to other
15 taxable years) that results from a difference between
16 the taxpayer's treatment of an item to which this
17 subsection applies (as shown on the taxpayer's return
18 of tax) and the proper tax treatment of that item.

19 (2) Items to which subsection applies. This subsection
20 applies to any item that is attributable to any listed
21 transaction, as defined in Treasury Regulations, Section
22 1.6011-4, or Illinois listed transaction, as defined in
23 Section 501(b) (2), and to any item that is attributable to
24 any reportable transaction, as defined in Treasury
25 Regulations, Section 1.6011-4, or Illinois reportable
26 transaction, as defined in Section 501(b) (2) (other than a
27 listed transaction or Illinois listed transaction) if a
28 significant purpose of the transaction is the avoidance or
29 evasion of federal or Illinois income tax.

30 (3) Subsection (b) shall be applied by substituting
31 "30%" for "20%" with respect to the portion of any
32 reportable transaction understatement with respect to the
33 relevant facts affecting the tax treatment of the item that
34 are not adequately disclosed in accordance with Section

1 501(b) of this Act. A taxpayer shall be treated as making
2 adequate disclosure if the penalty for failure to disclose
3 is rescinded under Section 1001(b) (3) of this Act.

4 (4) Reasonable Cause Exception.

5 (A) In general. No penalty shall be imposed under
6 this subsection with respect to any portion of a
7 reportable transaction understatement if it is shown
8 that there was a reasonable cause for such portion and
9 that the taxpayer acted in good faith with respect to
10 such portion.

11 (B) Special rules. If the taxpayer has been
12 contacted by the Department regarding the use of a
13 potentially abusive tax shelter, subparagraph (A) does
14 not apply unless all of the following requirements are
15 met:

16 (i) There is or was substantial authority for
17 such treatment; and

18 (ii) The taxpayer reasonably believed that
19 such treatment was more likely than not the proper
20 treatment.

21 (C) Rules relating to reasonable belief. For
22 purposes of subparagraph (B), a taxpayer shall be
23 treated as having a reasonable belief with respect to
24 the tax treatment of an item only if such belief meets
25 the requirements of this subparagraph (C):

26 (i) Such belief must be based on the facts and
27 law that exist at the time the return of tax that
28 includes that tax treatment is filed;

29 (ii) Such belief must relate solely to the
30 taxpayer's chances of success on the merits of that
31 treatment and does not take into account the
32 possibility that the return will not be audited,
33 that the treatment will not be raised on audit, or
34 that the treatment will be resolved through

1 settlement if it is raised; and

2 (iii) Such belief is not based, in whole or in
3 part, on the opinion of a disqualified tax advisor
4 or on a disqualified opinion.

5 (5) Definitions.

6 (i) Disqualified tax advisor. The term
7 "disqualified tax advisor" is a tax advisor that meets
8 any of the following conditions:

9 (I) Is a material advisor who participates in
10 the organization, management, promotion, or sale
11 of the transaction or who is related (within the
12 meaning of Sections 267(b) or 707(b)(1) of the
13 Internal Revenue Code) to any person who so
14 participates;

15 (II) Is compensated directly or indirectly by
16 a material advisor with respect to the
17 transaction;

18 (III) Has a fee arrangement with respect to the
19 transaction that is contingent on all or part of
20 the intended tax benefits from the transaction
21 being sustained; or

22 (IV) As determined under regulations
23 prescribed by either the Secretary of the Treasury
24 for federal income tax purposes or the Department,
25 has a continuing financial interest with respect
26 to the transaction.

27 (ii) Disqualified opinion. The term "disqualified
28 opinion" means an opinion that meets any of the
29 following conditions:

30 (I) Is based on unreasonable factual or legal
31 assumptions (including assumptions as to future
32 events);

33 (II) Unreasonably relies on representations,
34 statements, findings, or agreements of the

1 taxpayer or any other person;

2 (III) Does not identify and consider all
3 relevant facts; or

4 (IV) Fails to meet any other requirement as
5 either the Secretary of the Treasury for federal
6 income tax purposes or the Department may
7 prescribe.

8 (iii) Material Advisor. The term "material
9 advisor" shall have substantially the same meaning as
10 the same term is defined under Treasury Regulations
11 Section 301.6112-1, (26 CFR 301.6112-1) and shall
12 include any person that is a material advisor for
13 federal income tax purposes under such regulation.

14 (6) Amended returns. Except as provided in Department
15 Regulations, in no event may any tax treatment included
16 with an amendment or supplement to a return of tax be taken
17 into account in determining the amount of any reportable
18 transaction understatement if the amendment or supplement
19 is filed after the date the taxpayer is first contacted by
20 either the Internal Revenue Service for federal income tax
21 purposes or by the Department regarding the examination of
22 the return or such later date as specified by the
23 Department by regulation.

24 (7) Effective date. This subsection shall apply to
25 taxable years ending on and after December 31, 2004, except
26 that a reportable transaction understatement shall include
27 an understatement (as determined under paragraph (1)) with
28 respect to any taxable year for which the limitations
29 period on assessment has not expired that is attributable
30 to a transaction in which the taxpayer has invested after
31 February 28, 2000 that becomes a listed transaction (as
32 defined in Treasury Regulations Section 1.6011-4(b)(2)) or
33 Illinois listed transaction (as defined in Section
34 501(b)(2)(A)(2)) at any time.

1 (c) 100% Interest Penalty. If a taxpayer has been contacted
2 by the Internal Revenue Service or the Department regarding the
3 use of a potentially abusive tax shelter with respect to any
4 taxable year for which the limitations period on assessment has
5 not expired, and has a deficiency attributable to a potentially
6 abusive tax shelter with respect to such taxable year or years,
7 there shall be added to the tax an amount equal to 100% of the
8 interest assessed under the Uniform Penalty and Interest Act
9 for the period beginning on the last date prescribed by law for
10 the payment of such tax and ending on the date of the notice of
11 deficiency. Such penalty shall be deemed assessed upon the
12 assessment of the interest to which such penalty relates and
13 shall be collected and paid in the same manner as such
14 interest. The penalty imposed by this subsection is in addition
15 to any penalty imposed by this Act or the Uniform Penalty and
16 Interest Act. For purposes of this subsection and subsection
17 (d) of this Section, the term "potentially abusive tax shelter"
18 means (i) any tax shelter (as defined in Section 6111 of the
19 Internal Revenue Code) with respect to which registration is
20 required under Section 6111 of the Internal Revenue Code and
21 (ii) any entity, investment plan, arrangement, or other plan or
22 arrangement that is of a type that the Internal Revenue Service
23 or the Department determines by rule has a potential for tax
24 avoidance or evasion (including, but not limited to, listed
25 transactions and Illinois listed transactions).

26 (d) 150% Interest Rate. For taxable years ending on and
27 after July 1, 2002, for any notice of deficiency issued before
28 the taxpayer is contacted by the Internal Revenue Service or
29 the Department regarding a potentially abusive tax shelter, the
30 taxpayer is subject to interest as provided under Section 3-2
31 of the Uniform Penalty and Interest Act, but with respect to
32 any deficiency attributable to a potentially abusive tax
33 shelter, the taxpayer is subject to interest at a rate of 150%
34 of the otherwise applicable rate.

1 (e) Coordination with other penalties. Except as provided
2 in regulations, the penalties imposed by this Section are in
3 addition to any other penalty imposed by this Act or the
4 Uniform Penalty and Interest Act.

5 ~~The provisions of this Section shall apply to all taxable years~~
6 ~~ending on or after January 1, 1986.~~

7 (Source: P.A. 87-205.)

8 (35 ILCS 5/1007 new)

9 Sec. 1007. Failure to register tax shelter or maintain
10 list.

11 (a) Penalty Imposed. Any person that fails to comply with
12 the requirements of Section 1405.5 or Section 1405.6 of this
13 Act shall incur a penalty as provided in this Section. A person
14 is not in compliance with the requirements of Section 1405.5
15 unless and until the required registration has been filed and
16 contains all of the information required to be included with
17 such registration under Section 6111 of the Internal Revenue
18 Code or such Section 1405.5. A person is not in compliance with
19 the requirements of Section 1405.6 unless, at the time the
20 required list is made available to the Department, such list
21 contains all of the information required to be maintained under
22 Section 6112 of the Internal Revenue Code or such Section
23 1405.6.

24 (b) Amount of Penalty. The following penalties apply:

25 (1) In the case of each failure to comply with
26 the requirements of subsection (a), subsection (b), or
27 subsection (e) of Section 1405.5, the penalty shall be
28 \$15,000.

29 (2) If the failure is with respect to a listed
30 transaction or Illinois listed transaction under
31 subsection (c) of Section 1405.5, the penalty shall be
32 \$100,000.

33 (3) In the case of each failure to comply with

1 the requirements of subsection (a) or subsection (b) of
2 Section 1405.6, the penalty shall be \$15,000.

3 (4) If the failure is with respect to a listed
4 transaction or Illinois listed transaction under
5 subsection (c) of Section 1405.6, the penalty shall be
6 \$100,000.

7 (c) Authority to rescind penalty. The Board of Appeals may
8 rescind all or any portion of any penalty imposed by this
9 Section with respect to any violation, if all of the following
10 apply:

11 (1) The violation is not with respect to a listed
12 transaction or Illinois listed transaction;

13 (2) The person on whom the penalty is imposed has a
14 history of complying with the requirements of this Act;

15 (3) It is shown that the violation is due to an
16 unintentional mistake of fact;

17 (4) Imposing the penalty would be against equity
18 and good conscience; and

19 (5) Rescinding the penalty would promote
20 compliance with the requirements of this Act and
21 effective tax administration. The exercise of
22 authority under this subsection shall be at the sole
23 discretion of the Director. Notwithstanding any other
24 law or rule of law, any determination under this
25 subsection may not be reviewed in any administrative or
26 judicial proceeding.

27 (d) Coordination with other penalties. The penalty imposed
28 by this Section is in addition to any penalty imposed by this
29 Act or the Uniform Penalty and Interest Act.

30 (35 ILCS 5/1008 new)

31 Sec. 1008. Promoting abusive tax shelters. Except as herein
32 provided, the provisions of Section 6700 of the Internal
33 Revenue Code shall apply for purposes of this Act as if such

1 section applied to an Illinois deduction, credit, exclusion
2 from income, allocation or apportionment rule, or other
3 Illinois tax benefit. Notwithstanding Section 6700(a) of the
4 Internal Revenue Code, if an activity with respect to which a
5 penalty imposed under Section 6700(a) of the Internal Revenue
6 Code, as applied for purposes of this Act, involves a statement
7 described in Section 6700(a)(2)(A) of the Internal Revenue
8 Code, as applied for purposes of this Act, the amount of the
9 penalty imposed under this Section shall be the greater of
10 \$10,000 or 50% of the gross income received (or to be received)
11 from any person to whom such statement is furnished that is
12 required to file a return under Section 502 of this Act.

13 (35 ILCS 5/1405.5 new)

14 Sec. 1405.5.Registration of tax shelters.

15 (a) Federal tax shelter. Any tax shelter organizer required
16 to register a tax shelter under Section 6111 of the Internal
17 Revenue Code after the effective date of this amendatory Act of
18 the 93rd General Assembly shall send a duplicate of the federal
19 registration information (and any additional information
20 required by the Department) to the Department not later than
21 the day on which registration is required under federal law.
22 Any person required to register under Section 6111 of the
23 Internal Revenue Code who receives a tax registration number
24 from the Secretary of the Treasury shall, within 30 days after
25 request by the Department, file a statement of that
26 registration number.

27 (b) Illinois tax shelter. Registration with the Department
28 shall be required with respect to (i) any investment that would
29 be considered a "tax shelter" under Section 6111 of the
30 Internal Revenue Code if the definition of "tax shelter ratio"
31 in subsection (c) of such section included the provisions of
32 this Act for deductions, credits, apportionment and
33 allocation, or that would be considered a tax shelter under

1 subsection (d) of such Section but for the fact that a
2 significant purpose is the avoidance or evasion of the tax
3 imposed by this Act rather than avoidance or evasion of federal
4 income tax and (ii) any listed transaction or Illinois listed
5 transaction as defined under Section 501(b) of this Act. The
6 tax shelter organizer shall make the registration required
7 under this subsection with respect to tax shelters in which
8 interests are first offered for sale after the effective date
9 of this amendatory Act of the 93rd General Assembly in the form
10 and manner prescribed by the Department, which shall include
11 the same information required for federal tax shelters and any
12 other information required by the Department, and shall be made
13 not later than the day on which the first offering for sale of
14 interests in the shelter occurs or, if the tax shelter
15 organizer reasonably believes as of the day of such first
16 offering that the tax shelter will not satisfy the conditions
17 of subsection (d) of this Section, within 60 days after the tax
18 shelter meets any of the conditions of subsection (d) of this
19 Section.

20 (c) Additional requirements for listed transactions and
21 Illinois listed transactions.

22 (1) In addition to the requirements of this
23 Section, for any transactions entered into on or after
24 February 28, 2000 that become listed transactions (as
25 defined under Treasury Regulations Section 1.6011-4)
26 at any time, those transactions shall be registered
27 with the Department (in the form and manner prescribed
28 by the Department) by the later of (i) 60 days after
29 entering into the transaction, (ii) 60 days after the
30 transaction becomes a listed transaction, or (iii)
31 December 31, 2004;

32 (2) In addition to the requirements of this
33 Section, for any transactions entered into on or after
34 January 1, 2004 that become Illinois listed

1 transactions (as defined under Section 501(b) of this
2 Act) at any time, those transactions shall be
3 registered with the Department by the later of (i) 60
4 days after entering into the transaction, (ii) 60 days
5 after the transaction becomes an Illinois listed
6 transaction, or (iii) December 31, 2004.

7 (d) Tax Shelters subject to this Section. The provisions of
8 this section apply to any tax shelter herein described that
9 additionally satisfies any of the following conditions: (1)
10 organized in this State; (2) doing business in this State; (3)
11 deriving income from sources in this State; or (4) at least one
12 of its investors is an Illinois taxpayer.

13 (e) Tax Shelter Identification Number.

14 (1) Any person who sells (or otherwise transfers)
15 an interest in an Illinois tax shelter shall (at such
16 times and in such manner as required by the Department)
17 furnish to each investor who purchases (or otherwise
18 acquires) an interest in such shelter from such person
19 the identification number assigned by the Department
20 to such tax shelter.

21 (2) Any person required to file a return under this
22 Act and required to include on the person's federal tax
23 return a tax shelter identification number pursuant to
24 Section 6111 of the Internal Revenue Code, shall
25 furnish such number upon filing of the person's
26 Illinois return.

27 (3) Any person claiming any deduction, credit, or
28 other tax benefit by reason of an Illinois tax shelter
29 shall include (in such manner as the Department may
30 prescribe) on the return of tax on which such
31 deduction, credit, or other benefit is claimed the
32 identification number assigned by the Department to
33 such tax shelter.

1 (35 ILCS 5/1405.6 new)

2 Sec. 1405.6. Investor lists.

3 (a) Federal abusive tax shelter. Any person required to
4 maintain a list under Section 6112 of the Internal Revenue Code
5 and Treasury Regulations Section 301.6112-1 with respect to a
6 potentially abusive tax shelter shall furnish such list to the
7 Department not later than the time such list is required to be
8 furnished to the Internal Revenue Service under federal income
9 tax law.

10 (b) Illinois abusive tax shelter. Each organizer and seller
11 of an Illinois potentially abusive tax shelter shall maintain a
12 list identifying each person who was sold an interest in such
13 shelter. Any person required to maintain a list under this
14 subsection shall make such list available to the Department
15 upon request by the Department, and except as otherwise
16 provided under regulations prescribed by the Department, shall
17 retain any information required to be included on such list for
18 7 years.

19 (1) Definitions.

20 (A) Illinois potentially abusive tax shelter. The
21 term "Illinois potentially abusive tax shelter" means
22 (i) any Illinois tax shelter (as defined in Section
23 1405.5) required to be registered under Section 1405.5
24 and (ii) any entity, investment, plan or arrangement,
25 or other plan or arrangement that is of a type that the
26 Department determines by regulation as having a
27 potential for avoidance or evasion of the tax imposed
28 by this Act (including an Illinois listed transaction
29 as defined under Section 501(b)). The term shall have
30 substantially the same meaning as a "potentially
31 abusive tax shelter" described in Treasury Regulations
32 Section 301.6112-1(b).

33 (B) Organizer or seller. An organizer or seller of
34 an Illinois potentially abusive tax shelter includes

1 any person that is a material adviser under Treasury
2 Regulations Section 301.6112-1 with respect to the
3 transaction that is an Illinois potentially abusive
4 tax shelter or would be considered a material adviser
5 under Treasury Regulations Section 301.6112-1 with
6 respect to the transaction if such transaction
7 constituted a potentially abusive tax shelter under
8 Treasury Regulations Section 301.6112-1.

9 (2) The list required under this Section shall include
10 the same information required with respect to a potentially
11 abusive tax shelter under Treasury Regulations Section
12 301.6112-1 and any other information as the Department may
13 require. Unless otherwise prescribed by the Department,
14 the list required under this Section shall be maintained in
15 the same form and manner as required with respect to a
16 potentially abusive tax shelter under Treasury Regulations
17 Section 301.6112-1.

18 (c) Additional requirements for listed transactions and
19 Illinois listed transactions.

20 (1) For transactions entered into on or after February
21 28, 2000, that become listed transactions (as defined under
22 Treasury Regulations Section 1.6011-4) at any time, the
23 list shall be furnished to the Department by the later of
24 (i) 60 days after entering into the transaction, (ii) 60
25 days after the transaction becomes a listed transaction, or
26 (iii) December 31, 2004.

27 (2) For transactions entered into on or after January
28 1, 2004 that become Illinois listed transactions (as
29 defined under Section 501(b) of this Act) at any time, the
30 list shall be furnished to the Department by the later of
31 (i) 60 days after entering into the transaction, (ii) 60
32 days after the transaction becomes an Illinois listed
33 transaction, or (iii) December 31, 2004.

34 (d) Tax Shelters subject to this Section. The provisions of

1 this section apply to any tax shelter herein described that
2 additionally satisfies any of the following conditions:

3 (1) Organized in this State;

4 (2) Doing business in this State;

5 (3) Deriving income from sources in this State; or

6 (4) At least one of its investors is an Illinois
7 taxpayer.

8 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)

9 Sec. 1501. Definitions.

10 (a) In general. When used in this Act, where not otherwise
11 distinctly expressed or manifestly incompatible with the
12 intent thereof:

13 (1) Business income. The term "business income" means
14 all income that may be treated as apportionable business
15 income under the Constitution of the United States.
16 Business income is net of the deductions allocable thereto
17 ~~income arising from transactions and activity in the~~
18 ~~regular course of the taxpayer's trade or business, net of~~
19 ~~the deductions allocable thereto, and includes income from~~
20 ~~tangible and intangible property if the acquisition,~~
21 ~~management, and disposition of the property constitute~~
22 ~~integral parts of the taxpayer's regular trade or business~~
23 ~~operations.~~ Such term does not include compensation or the
24 deductions allocable thereto. For each taxable year
25 beginning on or after January 1, 2003, a taxpayer may elect
26 to treat all income other than compensation as business
27 income. This election shall be made in accordance with
28 rules adopted by the Department and, once made, shall be
29 irrevocable.

30 (2) Commercial domicile. The term "commercial
31 domicile" means the principal place from which the trade or
32 business of the taxpayer is directed or managed.

33 (3) Compensation. The term "compensation" means wages,

1 salaries, commissions and any other form of remuneration
2 paid to employees for personal services.

3 (4) Corporation. The term "corporation" includes
4 associations, joint-stock companies, insurance companies
5 and cooperatives. Any entity, including a limited
6 liability company formed under the Illinois Limited
7 Liability Company Act, shall be treated as a corporation if
8 it is so classified for federal income tax purposes.

9 (5) Department. The term "Department" means the
10 Department of Revenue of this State.

11 (6) Director. The term "Director" means the Director of
12 Revenue of this State.

13 (7) Fiduciary. The term "fiduciary" means a guardian,
14 trustee, executor, administrator, receiver, or any person
15 acting in any fiduciary capacity for any person.

16 (8) Financial organization.

17 (A) The term "financial organization" means any
18 bank, bank holding company, trust company, savings
19 bank, industrial bank, land bank, ~~safe deposit~~
20 ~~company,~~ private banker, savings and loan association,
21 building and loan association, credit union, ~~currency~~
22 ~~exchange,~~ cooperative bank, ~~small loan company,~~ ~~sales~~
23 ~~finance company,~~ investment company, or any person
24 which is owned by a bank or bank holding company. For
25 the purpose of this Section a "person" will include
26 only those persons which a bank holding company may
27 acquire and hold an interest in, directly or
28 indirectly, under the provisions of the Bank Holding
29 Company Act of 1956 (12 U.S.C. 1841, et seq.), except
30 where interests in any person must be disposed of
31 within certain required time limits under the Bank
32 Holding Company Act of 1956.

33 (B) For purposes of subparagraph (A) of this
34 paragraph, the term "bank" includes (i) any entity that

1 is regulated by the Comptroller of the Currency under
2 the National Bank Act, or by the Federal Reserve Board,
3 or by the Federal Deposit Insurance Corporation and
4 (ii) any federally or State chartered bank operating as
5 a credit card bank.

6 (C) For purposes of subparagraph (A) of this
7 paragraph, the term "sales finance company" has the
8 meaning provided in the following item (i) or (ii):

9 (i) A person primarily engaged in one or more
10 of the following businesses: the business of
11 purchasing customer receivables, the business of
12 making loans upon the security of customer
13 receivables, the business of making loans for the
14 express purpose of funding purchases of tangible
15 personal property or services by the borrower, or
16 the business of finance leasing. For purposes of
17 this item (i), "customer receivable" means:

18 (a) a retail installment contract or
19 retail charge agreement within the meaning of
20 the Sales Finance Agency Act, the Retail
21 Installment Sales Act, or the Motor Vehicle
22 Retail Installment Sales Act;

23 (b) an installment, charge, credit, or
24 similar contract or agreement arising from the
25 sale of tangible personal property or services
26 in a transaction involving a deferred payment
27 price payable in one or more installments
28 subsequent to the sale; or

29 (c) the outstanding balance of a contract
30 or agreement described in provisions (a) or (b)
31 of this item (i).

32 A customer receivable need not provide for
33 payment of interest on deferred payments. A sales
34 finance company may purchase a customer receivable

1 from, or make a loan secured by a customer
2 receivable to, the seller in the original
3 transaction or to a person who purchased the
4 customer receivable directly or indirectly from
5 that seller.

6 (ii) A corporation meeting each of the
7 following criteria:

8 (a) the corporation must be a member of an
9 "affiliated group" within the meaning of
10 Section 1504(a) of the Internal Revenue Code,
11 determined without regard to Section 1504(b)
12 of the Internal Revenue Code;

13 (b) more than 50% of the gross income of
14 the corporation for the taxable year must be
15 interest income derived from qualifying loans.
16 A "qualifying loan" is a loan made to a member
17 of the corporation's affiliated group that
18 originates customer receivables (within the
19 meaning of item (i)) or to whom customer
20 receivables originated by a member of the
21 affiliated group have been transferred, to the
22 extent the average outstanding balance of
23 loans from that corporation to members of its
24 affiliated group during the taxable year do not
25 exceed the limitation amount for that
26 corporation. The "limitation amount" for a
27 corporation is the average outstanding
28 balances during the taxable year of customer
29 receivables (within the meaning of item (i))
30 originated by all members of the affiliated
31 group. If the average outstanding balances of
32 the loans made by a corporation to members of
33 its affiliated group exceed the limitation
34 amount, the interest income of that

1 corporation from qualifying loans shall be
2 equal to its interest income from loans to
3 members of its affiliated groups times a
4 fraction equal to the limitation amount
5 divided by the average outstanding balances of
6 the loans made by that corporation to members
7 of its affiliated group;

8 (c) the total of all shareholder's equity
9 (including, without limitation, paid-in
10 capital on common and preferred stock and
11 retained earnings) of the corporation plus the
12 total of all of its loans, advances, and other
13 obligations payable or owed to members of its
14 affiliated group may not exceed 20% of the
15 total assets of the corporation at any time
16 during the tax year; and

17 (d) more than 50% of all interest-bearing
18 obligations of the affiliated group payable to
19 persons outside the group determined in
20 accordance with generally accepted accounting
21 principles must be obligations of the
22 corporation.

23 This amendatory Act of the 91st General Assembly is
24 declaratory of existing law.

25 (D) Subparagraphs (B) and (C) of this paragraph are
26 declaratory of existing law and apply retroactively,
27 for all tax years beginning on or before December 31,
28 1996, to all original returns, to all amended returns
29 filed no later than 30 days after the effective date of
30 this amendatory Act of 1996, and to all notices issued
31 on or before the effective date of this amendatory Act
32 of 1996 under subsection (a) of Section 903, subsection
33 (a) of Section 904, subsection (e) of Section 909, or
34 Section 912. A taxpayer that is a "financial

1 organization" that engages in any transaction with an
2 affiliate shall be a "financial organization" for all
3 purposes of this Act.

4 (E) For all tax years beginning on or before
5 December 31, 1996, a taxpayer that falls within the
6 definition of a "financial organization" under
7 subparagraphs (B) or (C) of this paragraph, but who
8 does not fall within the definition of a "financial
9 organization" under the Proposed Regulations issued by
10 the Department of Revenue on July 19, 1996, may
11 irrevocably elect to apply the Proposed Regulations
12 for all of those years as though the Proposed
13 Regulations had been lawfully promulgated, adopted,
14 and in effect for all of those years. For purposes of
15 applying subparagraphs (B) or (C) of this paragraph to
16 all of those years, the election allowed by this
17 subparagraph applies only to the taxpayer making the
18 election and to those members of the taxpayer's unitary
19 business group who are ordinarily required to
20 apportion business income under the same subsection of
21 Section 304 of this Act as the taxpayer making the
22 election. No election allowed by this subparagraph
23 shall be made under a claim filed under subsection (d)
24 of Section 909 more than 30 days after the effective
25 date of this amendatory Act of 1996.

26 (F) Finance Leases. For purposes of this
27 subsection, a finance lease shall be treated as a loan
28 or other extension of credit, rather than as a lease,
29 regardless of how the transaction is characterized for
30 any other purpose, including the purposes of any
31 regulatory agency to which the lessor is subject. A
32 finance lease is any transaction in the form of a lease
33 in which the lessee is treated as the owner of the
34 leased asset entitled to any deduction for

1 depreciation allowed under Section 167 of the Internal
2 Revenue Code.

3 (9) Fiscal year. The term "fiscal year" means an
4 accounting period of 12 months ending on the last day of
5 any month other than December.

6 (10) Includes and including. The terms "includes" and
7 "including" when used in a definition contained in this Act
8 shall not be deemed to exclude other things otherwise
9 within the meaning of the term defined.

10 (11) Internal Revenue Code. The term "Internal Revenue
11 Code" means the United States Internal Revenue Code of 1954
12 or any successor law or laws relating to federal income
13 taxes in effect for the taxable year.

14 (11.5) Investment partnership.

15 (A) The term "investment partnership" means any
16 entity that is treated as a partnership for federal
17 income tax purposes that meets the following
18 requirements:

19 (i) no less than 90% of the partnership's cost
20 of its total assets consists of qualifying
21 investment securities, deposits at banks or other
22 financial institutions, and office space and
23 equipment reasonably necessary to carry on its
24 activities as an investment partnership;

25 (ii) no less than 90% of its gross income
26 consists of interest, dividends, and gains from
27 the sale or exchange of qualifying investment
28 securities; and

29 (iii) the partnership is not a dealer in
30 qualifying investment securities.

31 (B) For purposes of this paragraph (11.5), the term
32 “qualifying investment securities” includes all
33 of the following:

34 (i) common stock, including preferred or debt

1 securities convertible into common stock, and
2 preferred stock;

3 (ii) bonds, debentures, and other debt
4 securities;

5 (iii) foreign and domestic currency deposits
6 secured by federal, state, or local governmental
7 agencies;

8 (iv) mortgage or asset-backed securities
9 secured by federal, state, or local governmental
10 agencies;

11 (v) repurchase agreements and loan
12 participations;

13 (vi) foreign currency exchange contracts and
14 forward and futures contracts on foreign
15 currencies;

16 (vii) stock and bond index securities and
17 futures contracts and other similar financial
18 securities and futures contracts on those
19 securities;

20 (viii) options for the purchase or sale of any
21 of the securities, currencies, contracts, or
22 financial instruments described in items (i) to
23 (vii), inclusive;

24 (ix) regulated futures contracts;

25 (x) commodities (not described in Section
26 1221(a)(1) of the Internal Revenue Code) or
27 futures, forwards, and options with respect to
28 such commodities, provided, however, that any item
29 of a physical commodity to which title is actually
30 acquired in the partnership's capacity as a dealer
31 in such commodity shall not be a qualifying
32 investment security;

33 (xi) derivatives; and

34 (xii) a partnership interest in another

1 partnership that is an investment partnership.

2 (12) Mathematical error. The term "mathematical error"
3 includes the following types of errors, omissions, or
4 defects in a return filed by a taxpayer which prevents
5 acceptance of the return as filed for processing:

6 (A) arithmetic errors or incorrect computations on
7 the return or supporting schedules;

8 (B) entries on the wrong lines;

9 (C) omission of required supporting forms or
10 schedules or the omission of the information in whole
11 or in part called for thereon; and

12 (D) an attempt to claim, exclude, deduct, or
13 improperly report, in a manner directly contrary to the
14 provisions of the Act and regulations thereunder any
15 item of income, exemption, deduction, or credit.

16 (13) Nonbusiness income. The term "nonbusiness income"
17 means all income other than business income or
18 compensation.

19 (14) Nonresident. The term "nonresident" means a
20 person who is not a resident.

21 (15) Paid, incurred and accrued. The terms "paid",
22 "incurred" and "accrued" shall be construed according to
23 the method of accounting upon the basis of which the
24 person's base income is computed under this Act.

25 (16) Partnership and partner. The term "partnership"
26 includes a syndicate, group, pool, joint venture or other
27 unincorporated organization, through or by means of which
28 any business, financial operation, or venture is carried
29 on, and which is not, within the meaning of this Act, a
30 trust or estate or a corporation; and the term "partner"
31 includes a member in such syndicate, group, pool, joint
32 venture or organization.

33 The term "partnership" includes any entity, including
34 a limited liability company formed under the Illinois

1 Limited Liability Company Act, classified as a partnership
2 for federal income tax purposes.

3 The term "partnership" does not include a syndicate,
4 group, pool, joint venture, or other unincorporated
5 organization established for the sole purpose of playing
6 the Illinois State Lottery.

7 (17) Part-year resident. The term "part-year resident"
8 means an individual who became a resident during the
9 taxable year or ceased to be a resident during the taxable
10 year. Under Section 1501(a)(20)(A)(i) residence commences
11 with presence in this State for other than a temporary or
12 transitory purpose and ceases with absence from this State
13 for other than a temporary or transitory purpose. Under
14 Section 1501(a)(20)(A)(ii) residence commences with the
15 establishment of domicile in this State and ceases with the
16 establishment of domicile in another State.

17 (18) Person. The term "person" shall be construed to
18 mean and include an individual, a trust, estate,
19 partnership, association, firm, company, corporation,
20 limited liability company, or fiduciary. For purposes of
21 Section 1301 and 1302 of this Act, a "person" means (i) an
22 individual, (ii) a corporation, (iii) an officer, agent, or
23 employee of a corporation, (iv) a member, agent or employee
24 of a partnership, or (v) a member, manager, employee,
25 officer, director, or agent of a limited liability company
26 who in such capacity commits an offense specified in
27 Section 1301 and 1302.

28 (18A) Records. The term "records" includes all data
29 maintained by the taxpayer, whether on paper, microfilm,
30 microfiche, or any type of machine-sensible data
31 compilation.

32 (19) Regulations. The term "regulations" includes
33 rules promulgated and forms prescribed by the Department.

34 (20) Resident. The term "resident" means:

1 (A) an individual (i) who is in this State for
2 other than a temporary or transitory purpose during the
3 taxable year; or (ii) who is domiciled in this State
4 but is absent from the State for a temporary or
5 transitory purpose during the taxable year;

6 (B) The estate of a decedent who at his or her
7 death was domiciled in this State;

8 (C) A trust created by a will of a decedent who at
9 his death was domiciled in this State; and

10 (D) An irrevocable trust, the grantor of which was
11 domiciled in this State at the time such trust became
12 irrevocable. For purpose of this subparagraph, a trust
13 shall be considered irrevocable to the extent that the
14 grantor is not treated as the owner thereof under
15 Sections 671 through 678 of the Internal Revenue Code.

16 (21) Sales. The term "sales" means all gross receipts
17 of the taxpayer not allocated under Sections 301, 302 and
18 303.

19 (22) State. The term "state" when applied to a
20 jurisdiction other than this State means any state of the
21 United States, the District of Columbia, the Commonwealth
22 of Puerto Rico, any Territory or Possession of the United
23 States, and any foreign country, or any political
24 subdivision of any of the foregoing. For purposes of the
25 foreign tax credit under Section 601, the term "state"
26 means any state of the United States, the District of
27 Columbia, the Commonwealth of Puerto Rico, and any
28 territory or possession of the United States, or any
29 political subdivision of any of the foregoing, effective
30 for tax years ending on or after December 31, 1989.

31 (23) Taxable year. The term "taxable year" means the
32 calendar year, or the fiscal year ending during such
33 calendar year, upon the basis of which the base income is
34 computed under this Act. "Taxable year" means, in the case

1 of a return made for a fractional part of a year under the
2 provisions of this Act, the period for which such return is
3 made.

4 (24) Taxpayer. The term "taxpayer" means any person
5 subject to the tax imposed by this Act.

6 (25) International banking facility. The term
7 international banking facility shall have the same meaning
8 as is set forth in the Illinois Banking Act or as is set
9 forth in the laws of the United States or regulations of
10 the Board of Governors of the Federal Reserve System.

11 (26) Income Tax Return Preparer.

12 (A) The term "income tax return preparer" means any
13 person who prepares for compensation, or who employs
14 one or more persons to prepare for compensation, any
15 return of tax imposed by this Act or any claim for
16 refund of tax imposed by this Act. The preparation of a
17 substantial portion of a return or claim for refund
18 shall be treated as the preparation of that return or
19 claim for refund.

20 (B) A person is not an income tax return preparer
21 if all he or she does is

22 (i) furnish typing, reproducing, or other
23 mechanical assistance;

24 (ii) prepare returns or claims for refunds for
25 the employer by whom he or she is regularly and
26 continuously employed;

27 (iii) prepare as a fiduciary returns or claims
28 for refunds for any person; or

29 (iv) prepare claims for refunds for a taxpayer
30 in response to any notice of deficiency issued to
31 that taxpayer or in response to any waiver of
32 restriction after the commencement of an audit of
33 that taxpayer or of another taxpayer if a
34 determination in the audit of the other taxpayer

1 directly or indirectly affects the tax liability
2 of the taxpayer whose claims he or she is
3 preparing.

4 (27) Unitary business group. The term "unitary
5 business group" means a group of persons related through
6 common ownership whose business activities are integrated
7 with, dependent upon and contribute to each other. The
8 group will not include those members who, in taxable years
9 on or after December 31, 2004, are foreign persons and
10 whose business activity outside the United States is 80% or
11 more of any such member's total business activity; for
12 purposes of this paragraph and clause (a)(3)(B)(ii) of
13 Section 304, business activity within the United States
14 shall be measured by means of the factors ordinarily
15 applicable under subsections (a), (b), (c), (d), or (h) of
16 Section 304 except that, in the case of members ordinarily
17 required to apportion business income by means of the 3
18 factor formula of property, payroll and sales specified in
19 subsection (a) of Section 304, including the formula as
20 weighted in subsection (h) of Section 304, such members
21 shall not use the sales factor in the computation and the
22 results of the property and payroll factor computations of
23 subsection (a) of Section 304 shall be divided by 2 (by one
24 if either the property or payroll factor has a denominator
25 of zero). The computation required by the preceding
26 sentence shall, in each case, involve the division of the
27 member's property, payroll, or revenue miles in the United
28 States, insurance premiums on property or risk in the
29 United States, or financial organization business income
30 from sources within the United States, as the case may be,
31 by the respective worldwide figures for such items. Common
32 ownership in the case of corporations is the direct or
33 indirect control or ownership of more than 50% of the
34 outstanding voting stock of the persons carrying on unitary

1 business activity. Unitary business activity can
2 ordinarily be illustrated where the activities of the
3 members are: (1) in the same general line (such as
4 manufacturing, wholesaling, retailing of tangible personal
5 property, insurance, transportation or finance); or (2)
6 are steps in a vertically structured enterprise or process
7 (such as the steps involved in the production of natural
8 resources, which might include exploration, mining,
9 refining, and marketing); and, in either instance, the
10 members are functionally integrated through the exercise
11 of strong centralized management (where, for example,
12 authority over such matters as purchasing, financing, tax
13 compliance, product line, personnel, marketing and capital
14 investment is not left to each member). For taxable years
15 ending before December 31, 2004, a ~~In no event, however,~~
16 ~~will any~~ unitary business group shall not include members
17 which are ordinarily required to apportion business income
18 under different subsections of Section 304, except that for
19 tax years ending on or after December 31, 1987 and before
20 December 31, 2004, this prohibition shall not apply to a
21 unitary business group composed of one or more taxpayers
22 all of which apportion business income pursuant to
23 subsection (b) of Section 304, or all of which apportion
24 business income pursuant to subsection (d) of Section 304,
25 and a holding company of such single-factor taxpayers (see
26 definition of "financial organization" for rule regarding
27 holding companies of financial organizations). If a
28 unitary business group would, but for the preceding
29 sentence, include members that are ordinarily required to
30 apportion business income under different subsections of
31 Section 304, then for each subsection of Section 304 for
32 which there are two or more members, there shall be a
33 separate unitary business group composed of such members.
34 For purposes of the preceding two sentences, a member is

1 "ordinarily required to apportion business income" under a
2 particular subsection of Section 304 if it would be
3 required to use the apportionment method prescribed by such
4 subsection except for the fact that it derives business
5 income solely from Illinois. Pursuant to rules adopted by
6 the Department, the members of a unitary business group (as
7 defined in this Section) may jointly elect to include in
8 the group for any taxable year ending on or after December
9 31, 2004, a passive income affiliate, as defined in
10 paragraph (29) of this subsection. Where the election is
11 made to include a passive income affiliate in the unitary
12 business group, for purposes of computing the affiliate's
13 base income under Section 203 of this Act, the affiliate's
14 federal taxable income shall be deemed to consist solely of
15 its passive income, as defined in subparagraph (B) of
16 paragraph (29) of this subsection, net of related expenses.
17 As used in this paragraph, for taxable years ending on or
18 after December 31, 2004, the phrase "United States" means
19 the 50 states, the District of Columbia, any territory or
20 possession of the United States, and any area over which
21 the United States has asserted jurisdiction or claimed
22 exclusive rights with respect to the exploration for or
23 exploitation of natural resources. This definition
24 includes, but is not limited to, Puerto Rico and the outer
25 continental shelf and any artificial islands and
26 structures therein.

27 If the unitary business group members' accounting
28 periods differ, the common parent's accounting period or,
29 if there is no common parent, the accounting period of the
30 member that is expected to have, on a recurring basis, the
31 greatest Illinois income tax liability must be used to
32 determine whether to use the apportionment method provided
33 in subsection (a) or subsection (h) of Section 304. The
34 prohibition against membership in a unitary business group

1 for taxpayers ordinarily required to apportion income
2 under different subsections of Section 304 does not apply
3 to taxpayers required to apportion income under subsection
4 (a) and subsection (h) of Section 304. The provisions of
5 this amendatory Act of 1998 apply to tax years ending on or
6 after December 31, 1998.

7 (28) Subchapter S corporation. The term "Subchapter S
8 corporation" means a corporation for which there is in
9 effect an election under Section 1362 of the Internal
10 Revenue Code, or for which there is a federal election to
11 opt out of the provisions of the Subchapter S Revision Act
12 of 1982 and have applied instead the prior federal
13 Subchapter S rules as in effect on July 1, 1982.

14 (29) Passive income affiliate.

15 (A) In general. The term "passive income
16 affiliate" means any person if (i) the person would be
17 a member of a unitary business group under paragraph
18 (27) of this subsection except for the fact that the
19 person is a foreign person and 80% or more of the
20 person's business activity is outside the United
21 States (as determined under paragraph (27)) and (ii) at
22 least 50% of the person's total gross income (as
23 defined in this Section) for the taxable year consists
24 of "passive income" as set forth in subparagraph (B) of
25 this paragraph.

26 (B) Passive income. For purpose of subparagraph
27 (A), "passive income" includes the following items
28 (whether or not business income):

29 (i) dividends, interest, annuities, and
30 royalties (except that "royalties" does not
31 include "active business computer software
32 royalties", as defined in Section 543(d) of the
33 Internal Revenue Code);

34 (ii) gains from the sale or exchange of stock

1 or securities;

2 (iii) gains from futures transactions in any
3 commodity on or subject to the rules of a board of
4 trade or commodity exchange (except that, pursuant
5 to rules adopted by the Department, gains by a
6 producer, processor, merchant, or handler of the
7 commodity that arise out of bona fide hedging
8 transactions reasonably necessary to the conduct
9 of its business in the manner in which the business
10 is customarily and usually conducted by others
11 shall not be included);

12 (iv) amounts included in income under part I of
13 subchapter J of the Internal Revenue Code and gains
14 from the sale of other disposition of any interest
15 in an estate or trust;

16 (v) amounts received as compensation (however
17 designated and from whomever received) for the use
18 of, or the right to use, property of the person in
19 any case where the party entitled to the use of the
20 property (whether the right is obtained directly
21 from the person or by means of a sublease or other
22 arrangement) would be a member of the person's
23 unitary business group under paragraph (27) of
24 this subsection but for the fact that the person's
25 business activity outside the United States is 80%
26 or more of total business activity as determined
27 under paragraph (27);

28 (vi) rents, unless constituting 50% or more of
29 the gross income. The term "rents" as used in this
30 subparagraph means compensation, however
31 designated, for the use of, or right to use,
32 property but does not include amounts described in
33 subparagraph (v); and

34 (vii) pursuant to rules adopted by the

1 Department, amounts similar to the items set forth
2 in (i) through (vi) above.

3 (C) Gross income and special rules.

4 (i) Gross income. The term "gross income"
5 means the gross income of the person computed under
6 Section 61 of the Internal Revenue Code (without
7 regard to the provisions of subchapter N of the
8 Internal Revenue Code) in any case as if such
9 person were a domestic corporation, partnership,
10 or trust, as applicable. Gross income determined
11 with respect to transactions described in
12 subparagraphs (ii) and (iii) of subparagraph (B)
13 of this paragraph shall include only the excess of
14 gains over losses from such transactions.

15 (ii) 80/20 dividends. Dividends received by a
16 person, directly or indirectly, with respect to
17 the stock of a corporation that is not a passive
18 income affiliate (as defined in this paragraph)
19 and that would be a member of that person's unitary
20 business group under paragraph (27) of this
21 subsection but for the fact that the corporation or
22 person conducts 80% or more of their business
23 activities outside the United States (as
24 determined under paragraph (27) of this
25 subsection) shall not be considered passive income
26 under subparagraph (B) of this paragraph.

27 (iii) Exclusion of banks. A person that is
28 organized and doing business under the banking or
29 credit laws of a state or foreign country shall not
30 be considered a passive income affiliate if it is
31 established to the satisfaction of the Director
32 that the person is not formed or availed of for the
33 purpose of avoiding federal income tax or Illinois
34 income tax. If the Director is satisfied that the

1 person is not so formed or availed of, the Director
2 shall issue to the person annually or at other
3 periodic intervals a certification that the person
4 is not a passive income affiliate.

5 (30) Foreign person. The term "foreign person" means
6 any person who is a nonresident alien individual and any
7 nonindividual other than a person created or organized in
8 the United States or under the law of the United States or
9 of any State.

10 (31) Small Business Person. As used in this Act, the
11 term "small business person" means any person who, with
12 respect to the taxable year:

13 (A) Is considered a small corporation for purposes
14 of the exemption under Section 55(e) (1) of the Internal
15 Revenue Code from the alternative minimum tax
16 (including a corporation that qualifies for the
17 exemption under Section 55(e) (1) (C)); or

18 (B) Would be considered a small corporation for
19 purposes of Section 55(e) (1) (including Section
20 55(e) (1) (C)) of the Internal Revenue Code if such
21 Section applied to individuals, S corporations,
22 trusts, estates, and partnerships. A partner
23 (including an owner of a limited liability company that
24 is treated as a partnership for purposes of federal and
25 State income taxation) or S corporation shareholder
26 shall not be considered a small business person with
27 respect to its distributive share or pro rata share
28 items passed through from the partnership or S
29 corporation for a taxable year unless the partnership
30 or S corporation constitutes a small business person
31 for the taxable year of the Partnership or S
32 corporation to which the items relate. The Department
33 shall promulgate rules to carry out the purposes of
34 this subparagraph.

1 (C) In the case of any person that is a member of a
2 unitary business group, as defined in Section
3 1501(a) (27) of this Act, the determination of whether
4 such person is a small business person under this
5 Section shall be made by applying the principles of
6 this Section to the unitary business group of which
7 such person is a part. For purposes of this
8 subparagraph, the unitary business group shall be
9 determined without regard to whether 80% or more of any
10 member's total business activity is outside the United
11 States and without regard to whether any member is
12 required to apportion business income under a
13 different subsection of Section 304.

14 (b) Other definitions.

15 (1) Words denoting number, gender, and so forth, when
16 used in this Act, where not otherwise distinctly expressed
17 or manifestly incompatible with the intent thereof:

18 (A) Words importing the singular include and apply
19 to several persons, parties or things;

20 (B) Words importing the plural include the
21 singular; and

22 (C) Words importing the masculine gender include
23 the feminine as well.

24 (2) "Company" or "association" as including successors
25 and assigns. The word "company" or "association", when used
26 in reference to a corporation, shall be deemed to embrace
27 the words "successors and assigns of such company or
28 association", and in like manner as if these last-named
29 words, or words of similar import, were expressed.

30 (3) Other terms. Any term used in any Section of this
31 Act with respect to the application of, or in connection
32 with, the provisions of any other Section of this Act shall
33 have the same meaning as in such other Section.

1 (Source: P.A. 91-535, eff. 1-1-00; 91-913, eff. 1-1-01; 92-846,
2 eff. 8-23-02.)

3 Section 999. Effective date. This Act takes effect July 1,
4 2004, except that Article 10 and this Section take effect upon
5 becoming law, and except that this entire Amendatory Act of the
6 93rd General Assembly is of no force and effect unless and
7 until House Bill 4266 of the 93rd General Assembly becomes law
8 in the same form as it passed both houses of the General
9 Assembly on April 29, 2004.".